NOTE

This Microfiche meets the quality requirements of the American National Standard for Microfiche of Documents (ANSI PH5.9-1975). However, because of imperfections in the document from which it was made, it contains images that are illegible or difficult to read. The source document for this microfiche is the best copy that could be obtained prior to filming.

CIS

Congressional Information Service, Inc
Washington, D C

S. Hrg. 99-241

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

S.J. Res. 13

A JOINT RESOLUTION PROPOSING AN AMENDMENT TO THE CONSTITUTION RELATING TO A FEDERAL BALANCED BUDGET AND TAX LIMITATION

MAY 7, 1985

Serial No. J-99-22

Printed for the use of the Committee on the the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
51-602 O
WASHINGTON : 1985

5521-5

COMMITTEE ON THE JUDICIARY

STROM THURMOND, South Carolina, *Chairman*

CHARLES McC. MATHIAS, Jr., Maryland
PAUL LAXALT, Nevada
ORRIN G. HATCH, Utah
ALAN K. SIMPSON, Wyoming
JOHN P. EAST, North Carolina
CHARLES E. GRASSLEY, Iowa
JEREMIAH DENTON, Alabama
ARLEN SPECTER, Pennsylvania
MITCH McCONNELL, Kentucky

JOSEPH R. BIDEN, Jr., Delaware
EDWARD M. KENNEDY, Massachusetts
ROBERT C. BYRD, West Virginia
HOWARD M. METZENBAUM, Ohio
DENNIS DeCONCINI, Arizona
PATRICK J. LEAHY, Vermont
HOWELL HEFLIN, Alabama
PAUL SIMON, Illinois

Dennis W. Shedd, *Chief Counsel and Staff Director*
Deborah K. Owen, *General Counsel*
Deborah G. Bernstein, *Chief Clerk*
Mark H. Gitenstein, *Minority Chief Counsel*

Subcommittee on the Constitution

ORRIN G. HATCH, Utah, *Chairman*

STROM THURMOND, South Carolina
CHARLES E. GRASSLEY, Iowa

DENNIS DeCONCINI, Arizona
PAUL SIMON, Illinois

Stephen J. Markman, *Chief Counsel and Staff Director*
Randall Rader, *General Counsel*
Bob Feidler, *Minority Chief Counsel*

CONTENTS

OPENING STATEMENTS

Page

Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah, chairman, Subcommittee on the Constitution 1

Denton, Hon. Jeremiah, a U.S. Senator from the State of Alabama 6

Heflin, Hon. Howell, a U.S. Senator from the State of Alabama 9, 10

Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina, chairman, Committee on the Judiciary 11

Simon, Hon. Paul, a U.S. Senator from the State of Illinois 12, 13

Metzenbaum, Hon. Howard M., a U.S. Senator from the State of Ohio 14

DeConcini, Hon. Dennis, a U.S. Senator from the State of Arizona 16, 17

Grassley, Hon. Charles E., a U.S. Senator from the State of Iowa 18

PROPOSED LEGISLATION

S.J. Res. 13—Joint resolution proposing an amendment to the Constitution relating to a Federal balanced budget and tax limitation 3

CHRONOLOGICAL LIST OF WITNESSES

Thornburgh, Hon. Dick, Governor, Commonwealth of Pennsylvania, on behalf of the National Governors Association 19

Wilson, Hon. Pete, a U.S. Senator from the State of California 35

Johnson, Hon. Manual H., Assistant Secretary of the Treasury, Washington, DC 50

Ash, Roy L., Committee for Economic Development, Los Angeles, CA; Rudolph G. Penner, Director, Congressional Budget Office, Washington, DC; and Martin Anderson, senior fellow, Hoover Institution, Stanford University, Palo Alto, CA 61

ALPHABETICAL LISTING AND MATERIALS SUBMITTED

Anderson, Martin:
  Testimony 76
  Prepared statement 79
Ash, Roy, L.: Testimony 61
DeConcini, Hon. Dennis:
  In the Supreme Court of the State of Montana, No. 84-391, from the Congressional Record, Oct. 11, 1984 42
  Supreme Court of the United States, No. A-137, from the Congressional Record, Oct. 11, 1984 43
Penner, Rudolph G.:
  Testimony 64
  Prepared statement 68
Johnson, Hon. Manuel H.:
  Testimony 50
  Prepared statement 54
Thornburgh, Hon. Dick:
  Testimony 19
  Prepared statement 22
Wilson, Hon. Pete:
  Testimony 35
  Prepared statement 39
  "Unbalanced Decision," from the San Francisco Chronicle 40

APPENDIX

Page

Testimony of Representative Larry E. Craig, chairman, Congressional Leaders United for the Balanced Budget (CLUBB) 94

Statement of the American Farm Bureau Federation 97

"Less Red Ink," by Milton Friedman, from the Atlantic Magazine, February 1983 100

BALANCED BUDGET CONSTITUTIONAL AMENDMENT

TUESDAY, MAY 7, 1985

U.S. Senate,
Subcommittee on the Constitution,
Committee on the Judiciary,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:32 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Orrin Hatch (chairman of the subcommittee) presiding.

Present: Senators Simon, Thurmond, DeConcini, Grassley, Biden, Heflin (ex officio), and Metzenbaum (ex officio).

Staff present: Stephen J. Markman, chief counsel and staff director; and Randall Rader, general counsel.

OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S. SENATOR FROM THE STATE OF UTAH, CHAIRMAN, SUBCOMMITTEE ON THE CONSTITUTION

Senator Hatch. Ladies and gentlemen, this marks the 15th day of hearings during the past 4 years by the Subcommittee on the Constitution on the proposed balanced budget constitutional amendment. Without question, this has been one of the most thoroughly considered legislative proposals in recent years. As in the past, this subcommittee will hear testimony today from an outstanding group of witnesses from a wide variety of backgrounds.

To put this hearing in further perspective, the proposed amendment before the subcommittee today is virtually identical to the measure approved during the last Congress by the full Judiciary Committee and approved in the previous Congress by the full U.S. Senate. In August 1982, the predecessor of this amendment became the first balanced budget measure ever to be proposed as an amendment to the U.S. Constitution by a two-thirds vote in the Senate. Although this measure was subsequently supported by nearly 60 percent of the Members of the House of Representatives, it fell narrowly shy of securing the necessary two-thirds vote.

While Congress has been giving serious consideration to the proposed balanced budget amendment, a remarkable effort has been simultaneously taking place within the States to effect a similar amendment through the Constitutional Convention route specified by article V of the Constitution. At present, there are 32 States which have submitted applications for a balanced budget convention, only 2 States short of the 34 States necessary to trigger such a convention. At the same time that this subcommittee considers the balanced budget amendment in executive session next week, it will also consider legislation to establish procedures for an article V convention. Similar legislation was already approved unanimously in the full Judiciary Committee during the last Congress.

Ladies and gentlemen, I do not intend to dwell at length on the proposed amendment in my opening statement. For those seriously interested in the details of the amendment and its constitutional foundation, I would call their attention to the Judiciary Committee Report from last year. I would, however, like to make three brief observations about the amendment generally.

First, the amendment is not designed as a panacea for our Nation's fiscal problems. It is not a cure-all and has never been advertised as such. What the amendment will achieve, in my judgment, is to create a fiscal environment in Congress within which more responsible budget-making decisions will be possible. The amendment will not alleviate the need for the electorate to send to Washington individuals committed to the principles of fiscal responsibility. It will simply give such persons far more of a fighting chance to be more effective than is currently the case. In short, the amendment is not a shortcut to fiscal sanity, but simply a necessary part of a larger reform effort.

Second, although it is a balanced budget amendment, an even more fundamental element of this amendment is the restoration of accountability to the congressional budget process. Perhaps the principal idea of the amendment is that Congress ought to retain the flexibility that is necessary to make day-to-day budgetary decisions and to determine overall spending and taxing levels, but still enabling the public to evaluate the decisions of their representatives. In one important sense, the amendment is designed to enhance the democratic nature of the budget process by better informing the citizens of which Members of Congress are in favor of higher deficits and higher levels of taxing and spending.

Finally, the proposed amendment is a constitutional amendment. It is not a statute of the Congress that attempts to fill in every detail of the budget process. Nor is it an enactment which is absolutely incapable of being circumvented by a legislative body which is bent upon circumventing it. Rather, as a constitutional amendment, it is designed to provide policy direction. There is no question that there will be an early need for the implementation of legislation to fill in any gaps neglected by the amendment. As with most other constitutional provisions, this one will be susceptible to abuse by a determined branch of Government. However, as with most other constitutional amendments, it is expected that the Members of Congress and the executive will do their best to abide not only by the letter, but by the spirit and intent of the amendment as well. I think our esteem for the Constitution demands no less.

I look forward to the testimony of each of our witnesses today and appreciate their efforts to be here to assist the subcommittee.

[The text of Senate Joint Resolution 13 and the prepared statement of Senator Denton follow:]

99TH CONGRESS
1ST SESSION

S. J. RES. 13

Proposing an amendment to the Constitution relating to a Federal balanced budget and tax limitation.

IN THE SENATE OF THE UNITED STATES

JANUARY 3, 1985

Mr. THURMOND (for himself, Mr. HATCH, Mr. DECONCINI, Mr. GRASSLEY, Mr. DENTON, Mr. HEFLIN, Mr. SPECTER, Mr. ABDNOR, Mr. BOREN, Mr. COCHRAN, Mr. D'AMATO, Mr. GOLDWATER, Mrs. HAWKINS, Mr. HECHT, Mr. LUGAR, Mr. MATTINGLY, Mr. MCCLURE, Mr. NICKLES, Mr. NUNN, Mr. PACKWOOD, Mr. PROXMIRE, Mr. QUAYLE, Mr. SYMMS, Mr. TRIBLE, Mr. WALLOP, Mr. WILSON, Mr. ZORINSKY, Mr. LAXALT, Mr. EAST, Mr. EXON, Mr. HELMS, Mr. SIMPSON, Mr. DANFORTH, and Mr. GARN) introduced the following joint resolution; which was read twice and referred to the Committee on the Judiciary

---

JOINT RESOLUTION

Proposing an amendment to the Constitution relating to a Federal balanced budget and tax limitation.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution if ratified by the legislatures of three-fourths of the several States within seven years after its submission to the States for ratification:

"ARTICLE —

"SECTION 1. Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are not greater than total receipts. The Congress may amend such statement provided revised outlays are not greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject. The Congress and the President shall ensure, pursuant to legislation or through exercise of their powers under the first and second articles, that actual outlays do not exceed the outlays set forth in such statement.

"SECTION 2. Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending not less then six months nor more than twelve months before such fiscal year, unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

"SECTION 3. Prior to each fiscal year, the President shall transmit to Congress a proposed statement of receipts and oulays for that year consistent with the provisions of this article.

"SECTION 4. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

"SECTION 5. Total receipts shall include all receipts of the United States except those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

"SECTION 6. The Congress shall enforce and implement this article by appropriate legislation.

"SECTION 7. This article shall take effect for the second fiscal year beginning after its ratification.".

PREPARED STATEMENT OF HON. JEREMIAH DENTON A
U.S. SENATOR FROM THE STATE OF ALABAMA

Mr. Chairman:

The Subcommittee is once again involved in a historic debate over the passage of a constitutional amendment to reform the budget, taxing, and spending practices of the Federal government. As an original cosponsor of the proposed amendment, S. J. Res. 13, I commend you, Mr. Chairman, for providing this opportunity to consider the merits of amending the Constitution in this way.

As support for the amendment has grown, I have been impressed by the urgency and the importance that millions of Americans attach to its passage. On the whole, I believe that American taxpayers are disappointed and frustrated that, year after year, the Congress has failed to balance the Federal budget. Their frustration is shown by the thirty-two state legislatures that have adopted resolutions urging the Congress and the President to bring the Nation's budget into balance.

At long last, the moment has come when the Congress can respond to the frustrations of American taxpayers by thoroughly debating, and then passing, the Balanced Budget Constitutional Amendment.

The resolution would amend the Constitution to require that, each year, Congress adopt a budget statement in which expenditures do not exceed revenues. Additionally, total revenues could not increase at a rate greater than the rate of increase in national income unless Congress passes a bill approving more revenues. The resolution would permit Congress to adopt a budget statement containing a deficit only if approved by three-fifths of both Houses of Congress or by a convention called for that purpose by two-thirds (34) of the States, and ratified by three-fourths (38) of the States. The resolution also would require the President to submit a balanced budget to Congress.

Mr. President, those who question the efficacy of a balanced budget amendment have raised two primary arguments in opposition to it. First, they argue that it would incorporate into the Constitution a rigid, and therefore economically unsound, fiscal policy. Second, they argue that amending the Constitution is too drastic a way to address the problem of spending.

I believe, however, that both arguments fall because they do not take into account the dual crises that our Nation faces: the economic crisis that threatens to destroy our historic high levels of productivity, and the crisis of confidence that results when average citizens lose faith in the ability of their government to exercise discipline in matters of taxing and spending.

I recognize that men and women of good will can disagree about the necessity of the provision of the amendment that prohibits increases in the share of the national income that goes to the Federal government unless a specific exception is approved by Congress. There are wide philosophical and political differences about the question of how much spending the Federal government can and should undertake.

The notion, however, that it is improper to reestablish the principle that Federal expenditures should be no greater than the Federal revenue is preposterous. It is only in recent years that the Congress abandoned the requirement of our "unwritten constitution" for a balanced budget. I do not believe that the American people will continue to tolerate the near tyranny of higher and higher rates of government spending and taxation.

From a practical standpoint, we should recognize that the amendment is not an attempt to write a particular theory of economics into the Constitution. As Professor Scalia of the University of Chicago has pointed out, the legislative requirements of the amendment "do not require any particular economic course," such as a balanced budget with no increase in taxes, "but merely specify the procedures to be followed when that course is abandoned." I believe, however, that it is clear that this amendment rightly establishes a bias in favor of a balanced budget with no increase in taxes. That is an appropriate national goal, which happens to be a popular one as well. It is one that the amendment can help us to attain without placing our public budget in the strait jacket of inflexible economic theory.

I must emphasize again that I believe that we face a crisis of confidence on the part of the American public. Most taxpayers simply do not believe that the Congress has the willpower to cut spending and balance the Federal budget. The mistrust appears well founded when one reviews the history of statutory efforts to reform the budget process and restrain spending. Alvin Rubushka of Stanford University presented such a review in a monograph prepared for the Taxpayers' Foundation. He said:

> In the Humphrey-Hawkins Full Employment Act, a balanced budget was declared to be a national public policy priority. An amendment offered by Rep. (now Senator) Charles Grassley and Senator Harry Byrd, Jr., to an IMF loan program measure was enacted into law and requires that, beginning with FY 1981, total budget outlays of the Federal government "shall not" exceed its receipts (P.L. 95-435). In 1979, a provision in a measure to increase the public debt limit stated that "congress shall balance the Federal budget" (P.L. 96-5), which required the congressional budget committees to propose balanced budgets for FY 1981 and subsequent years. None of these measures has effectively constrained deficits.

I strongly believe that the prudent and responsible management of public funds is a fundamental governmental and political requirement. The reestablishment of the balanced budget principle is a "broad and enduring ideal" that is worthy of inclusion in the document that establishes the basic structure of our government. I am afraid that simple statutory approaches to reasserting that important principle will fail like their predecessors. Only the enactment of a constitutional amendment will explicitly mandate fiscal responsibility and be enforceable by and on future Congresses.

I urge my colleagues to join in the effort to balance our national budget by placing a requirement to that effect in the fundamental law of our land. We need to do that for our benefit and for succeeding generations who will otherwise bear the burden of our profligacy and irresponsibility.

Thank you, Mr. Chairman.

Senator HATCH. At this time, we will turn to Senator Heflin.

OPENING STATEMENT OF HON. HOWELL HEFLIN, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator HEFLIN. Thank you, Mr. Chairman.

I am not a member of this subcommittee, but I am a member of the full Judiciary Committee. I used to be a member of this subcommittee, and I worked with you and others on the constitutional amendment which was voted out of this subcommittee several years ago and later voted out by the full committee and passed by the entire U.S. Senate.

The first bill I introduced when I came to the U.S. Senate was a bill calling for a constitutional amendment to balance the budget. And I want to commend you for your leadership and your tenacity on this matter. You have worked hard and diligently, throughout the time that I have been in the Senate on this, and I think this has probably been your priority of all legislation. You, of course, are committee chairman, but you have worked extremely hard on this particular matter. And I am particularly pleased with the activity that is going on with staff concerning this constitutional amendment. I would like to see us move forward rapidly. Let's vote this amendment out of subcommittee, out of the committee, onto the floor of the Senate, and pass it, hopefully this summer, so we can move forward.

I have a prepared statement which I would like to have introduced into the record. But I would like to make a comment, and this is not directed toward anyone. In effect, we have now gone through at least four sessions of budget reductions in which we have basically been cutting spending or delaying COLA's or taking other measures. And each time we have done so, we have based these decisions on certain assumptions, and the assumptions are always based upon some rosy anticipations.

And I think, hopefully, that we can come up with a substantial reduction, at least $52 billion as the President has requested in this year. We may vary as to the different packages. But if some of those assumptions do not prove to be as valid, we will probably be back here next year, and then the year after, and the year after. To me, the answer is to adopt a constitutional amendment requiring a balanced budget. After congressional approval, you would have about 2 years for the ratification process to take place, and then, under the language of the proposed amendment as it passed the Senate 2 years ago, it would not go into effect for 2 years. So you would have about a 4-year leadtime to get the budget balanced. In my judgment, it is going to require something like the Social Security Bipartisan Commission, which met and worked very closely with the White House, and with the Republican and Democratic leadership, to come up with a package.

We are going to have to address this issue; otherwise, next year we will be in a situation similar to what we are in today. We have had the Deficit Reduction Act of 1983; we had the Rose Garden downpayment plan of last year; we now have a GOP compromise that is already falling apart, but hopefully, we can put a bipartisan effort together and come up with at least a $52 billion deficit-reduction package. But next year, if the assumptions do not prove accurate, we will be in a situation of either Rose Garden No. 2, or the Blue Room, and the year after, it may be the Green Room.

I think it is time to send the message, and the message to me, and the answer, is that we must balance the budget, and it has to be done by constitutional amendment.

So I am pleased that you are moving forward, Mr. Chairman, and I congratulate you on your leadership.

[The prepared statement of Senator Heflin follows:]

PREPARED STATEMENT OF SENATOR HOWELL HEFLIN

Mr. Chairman: Let me first commend you for your leadership in our efforts to enact a constitutional amendment to balance the budget. The Subcommittee on the Constitution has played a pivotal role in developing this concept and it is at the subcommittee level that many of the specific provisions have been formulated to accomplish the task. This has been one of my top legislative priorities since coming to the Senate and I realize the time and effort you have contributed to making this amendment a reality.

The first piece of legislation I introduced as a U.S. Senator was a constitutional amendment to balance the Federal budget. In the 97th Congress, I was pleased to participate in the legislative process and even more pleased when the Senate passed the amendment by a vote of 69 to 31. However, the legislation fell short of the required two-thirds vote in the House of Representatives. In the 98th Congress, the full Judiciary Committee passed the amendment, but the amendment was never considered by the full Senate. It was with a sense of frustration and urgency that I again, at the beginning of my second term, introduced similar legislation.

There are those who believe that such an amendment is unworkable—That it is mere words without substance—but I believe that it is a committment to once again ensure the financial stability of this nation.

The past few months and particularly the past 2 weeks should demonstrate the nightmarish-process of formulating a budget that accomplishes our two major goals—meeting our needs and maintaining our financial strength.

We cannot expect to put a dent in the national debt unless we look beyond the next year and develop a long-term mentality to spend what we can afford and no more. I do not profess to have all the answers nor do I contend that this amendment is a panacea for all our economic ills. But I am convinced that this amendment is a necessary step in the right direction.

Maybe as some argue, a constitutional amendment is unnecessary because as responsible legislators we should develop a budget that is balanced on its face. I do not disagree with the sentiment of this statement, only the reality. We have not made the committment nor have we paid the price for a balanced budget. Every legislator will have to take some of the political heat. It is time to do the job we were elected to do. We will realize that we can do far more for this country in the long run by balancing the budget than we could ever do by playing politics. The future of this Nation lies in our progress, not our promises.

I look forward to the testimony to be received today and I thank these distinguished witnesses for participating as part of the hearing process.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator. I appreciate your kind remarks concerning me. I want to commend you. As a former member of this subcommittee, you participated very strongly in the original drafting efforts of this particular amendment and, of course, in all of the subsequent leadership on the floor and elsewhere. So we are very grateful to have you here today and to participate in this hearing.

We will now turn to the prime sponsor of this amendment. Senator Thurmond, who is presently President pro tempore of the Senate and chairman of the full Judiciary Committee, has worked for a balanced budget amendment ever since he has been in the Senate.

OPENING STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR FROM THE STATE OF SOUTH CAROLINA, CHAIRMAN, COMMITTEE ON THE JUDICIARY

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. Chairman, it is a pleasure to be here today to receive testimony on the proposed balanced budget tax limitation constitutional amendment.

I want to take this opportunity to commend you, Mr. Chairman, for holding this hearing and for your many efforts in support of the balanced budget amendment. I also want to commend the ranking minority member of this subcommitte, Senator DeConcini, and also the distinguished Senator from Alabama, Mr. Heflin, for their support and efforts on behalf of this amendment.

Mr. Chairman, I believe there are few, if any, proposals pending before Congress today that are of greater importance to the economic well-being of our Nation than a proposed balanced budget constitutional amendment.

In the last half-century, deficit spending has become the standard operating practice of the Federal Government. In fact, during the last 25 years, Congress has managed to balance the budget only one time. Critics of the balanced budget have argued that Congress could balance the budget without the mandate of the Constitution if it chose to do so. However, we have seen time and time again that Congress, faced with frightening budget deficits, refuses to bite the bullet and restore fiscal sanity to our system of government. Indeed, we are at this very time experiencing another painful example of this reality.

Mr. Chairman, I wonder how much longer we can afford to wait on Congress to get serious about a problem that threatens the security of our Nation.

The evidence is overwhelming that the vast majority of our Nation wishes to wait no longer. To date, 32 States have called for a Constitutional Convention to propose a balanced budget amendment. Only two more States must act to make such a convention a reality.

Recently, the National Governors Association adopted a bipartisan resolution urging the enactment of a constitutional amendment mandating a balanced Federal budget. It is important to note that many of those Governors operate under balanced budget mandates of their State constitutions, like that of my home State of South Carolina, and wish to see similar fiscal responsibility at the national level.

Mr. Chairman, I do not want to take up a great deal of the committee's time today. I am hopeful that this hearing will prove to be the first step toward congressional approval of the balanced budget amendment during the 99th Congress.

We have a distinguished group of witnesses today, and I look forward to hearing the testimony of some and reading the testimony of the balance.

Thank you very much, Mr. Chairman.

Senator HATCH. Thank you, Senator Thurmond.

We will now turn to Senator Simon, a member of the subcommittee.

OPENING STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Thank you, Mr. Chairman.

I will enter a statement in the record.

Senator HATCH. Without objection, we will place it in the record.

Senator SIMON. I have been concerned long before I came to Congress, with the whole question of balancing budgets. If you check back in the record in the Illinois State Senate, we issued the first big bond issue for two causes I believed in strongly—mental health and universities. It passed the State Senate of Illinois by a vote of 55 to 1, and I was that one who voted in opposition, saying that it would be the start of many bond issues. I was assured it was not going to be. I said at the time we would be much better off raising taxes slightly and not spending more and more money on interest. And unfortunately, there have been literally hundreds of bond issues in Illinois since that time.

I recall, when I was first running for the Illinois General Assembly, a man in South Roxanna, IL, wrote to me, and he had 13 points to his letter. The first 12 were increased services he wanted from government; the 13th point was a cut in taxes.

Mr. Chairman, we have adopted his program. We need some restraint. I am concerned about an increasing percentage of our tax dollar going for interest rather than goods and services. I do not care whether you are Liberal, Conservative, Republican, or Democrat—that just does not make sense, and we have to do something about it. So I have favored since my first days in Congress a constitutional amendment requiring a balanced budget.

I am concerned, however, with the form that it takes. I think your opening statement, Mr. Chairman, was an important one. We are not writing a statute. And so, section 2, which limits receipts by tying them to the GNP, is a real mistake. If there is a dip in the national economy, at that point, there will be a dip in Government spending. Thus, the process of Government spending will accelerate and worsen future economic situations.

I hope we can work out a bipartisan arrangement here that will not have the weaknesses of section 2. We have a legitimate need for greater restraint. We have simply demonstrated as a Congress that we do not have the ability, the willpower, to balance budgets on our own—and I have to say, we have not received much encouragement from the administration, from administrations of both political parties, in that direction.

So I hope something constructive can be worked out. We clearly have a massive problem on our hands. And if we can work out a good bipartisan product here, I think it can, then, not only be passed by the Senate, but passed by the House. And I hope that somehow, we can negotiate such a bipartisan product.

[The prepared statement of Senator Simon follows:]

PREPARED STATEMENT OF SENATOR PAUL SIMON

I am pleased this morning to have an opportunity to discuss the concept of a balanced budget amendment. Since my first days in Congress I have favored such an amendment.

After carefully reviewing Senate Joint Resolution 13, however, I have reached the conclusion that we need a broader, more flexible approach to this subject. I will offer an amendment to this resolution that deletes section 2. This includes the language tethering the growth of the budget to the growth in our national income. This is not in the spirit of balancing the budget but a decision to limit the scope of our government. This is the type of decision that must be made by each Congress and each generation. I would not like to imagine the Great Depression had Franklin Roosevelt's hands been bound by the nearsightedness of his predecessors.

This country enjoys the luxury of possessing the oldest working Constitution in the world. Nearly two hundred years ago in the muggy summer heat of Philadelphia a group of talented and dedicated men of remarkable foresight and wisdom drafted this miraculous document. Today each of us is grateful for the blessings of liberty that their labors have passed along to us.

But we should always remember the special nature of the Constitution that has allowed for this unprecedented success. The Constitution is a living document. Woven into its fabric is the understanding of change and modernization. The language is sweeping and broad. Though this has caused much debate over the past two centuries it has also ensured the survival ofour democracy.

I do not believe that Senate Joint Resolution 13 has provided this important degree of flexibility. In an effort to avoid future misunderstandings we have arrived at a proposal that is overly technical and detailed for long range success.

In my home State of Illinois, as in many of the States in this country, our original Constitution from the 19th century was framed by well-meaning individuals who attempted to anticipate the myriad of changes of the future. The result was a document of such detail and length that in a short time the only hope for an effective legislative system was to rewrite the entire Constitution. These problems have led to four separate revisions over the years and our current document is only 15 years old.

We must learn from mistakes like these. When we amend our Constitution we are not merely enacting simple legislation. We are setting the course of our democracy. I hope we work today to ensure that the future leaders of this country have the freedom to steer through the unseen dangers of tomorrow.

Senator **HATCH**. Thank you.

Senator Metzenbaum, you are not a member of the subcommittee, but we will be happy to take your statement, and then we will go to Senator DeConcini.

OPENING STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO

Senator METZENBAUM. Thank you, Mr. Chairman. You have always been very gracious. Even when you and I disagree, we are always very gracious to each other. So I appreciate your being kind enough to permit me to indicate my concern and opposition to this proposed constitutional amendment.

But first, I would like to welcome the distinguished group of witnesses who have agreed to testify today—and indeed, they are distinguished, on both sides of the issue. And I know that their comments and critique will be very helpful to all of us in considering this issue.

But in candor, I must say at the outset, this proposal is one of the biggest frauds ever perpetrated on the American public. It will not do what its proponents say it will do, because it is unworkable. It does not require a balanced budget as most people think it does, because it provides for Congress to simply vote for an unbalanced budget when it wants one. It will, however—and this to me is the critical point—it will divert attention from the real problem by holding out a pie-in-the-sky painless solution for our fiscal crisis.

There is an opportunity to balance the budget. And if I could be the pied piper of the Senate and ask all of those who are in favor of balancing the budget to follow me and walk on the floor of the U.S. Senate, and do that which has to be done—that is the place to balance the budget.

The President of the United States makes the greatest speeches of any President we have probably ever had. He talks about balancing the budget, and Congress meeting its responsibilities. But there is only one way to balance the budget. The President has to be willing to face up to the massive deficits that have resulted from his policies and propose a balanced budget.

And I have no doubt that if he proposed a fair balanced budget, that the Congress might, just might, quit dodging its responsibility and put its fiscal house in order. This President has consistently proposed massive deficits each year he has been in the White House, notwithstanding the very strong commitments and promises he made as a candidate, both in 1980 and in 1984. And at the same time he is proposing these massive deficits, he is the one that speaks out most strongly as the principal proponent of a balanced budget requirement in a constitutional amendment. And it really shows that you can fool most of the people most of the time.

Let me remind ourselves of the deficits that President Reagan has proposed. If the Congress had done exactly what he wanted, his budgets called for deficits in 1982 of $67 billion; in 1983 of $137 billion; in 1984 of $176 billion, and in 1985 of $192 billion, and in 1986, he is proposing a $186 billion deficit. This is the man who says pass a constitutional amendment, and suddenly it will solve all the problems.

The buck stops at the White House, and yes, it stops in the Congress of the United States, and it does not get resolved by passing a constitutional amendment.

The President's deficits are the result of a huge tax cut in 1981. And I am apologetic in admitting I voted for it—probably the most stupid vote I have made since I have been in the U.S. Congress. But who among us has not made some stupid votes? An excessive and wasteful increase in defense spending has also been a part of the President's package. And the President's unwillingness to close tax loopholes, or to force corporations to pay their fair share, is to me an instance of putting your head in the sand and just being unwilling to deal with the reality of the America in which we live.

Who among us, conservative or liberal, reactionary, rightwing, leftwing, Democrat, Republican—who can approve of the fact that 65 corporations, who between 1981 and 1983 made $49.5 billion, paid no taxes? Tell that to any of your constituents, and see if they think that that is right. Tell it to anybody in America. And then tell them that those wonderful corporations received $3.2 billion in refunds besides paying no taxes.

Until the President and the Congress have the courage and will to do that which has to be done about wasteful defense spending and the enormous evasion of taxes going on in this country—I guess a more proper word is "avoidance" because these people are not evading taxes; they are just complying with the law that we enacted, and the President urged us to enact, and he signed—until that occurs, deficit spending will continue.

Frankly, I do not believe that you can fool the people permanently. Somewhere, somewhere along the line, they catch up with you.

Listen to what these people of different political philosophies have said about the balanced budget amendment.

Former President Gerald Ford said it would raise false hopes.

Paul Volcker testified that it is not workable and can be used as a substitute for solving the deficit problem.

Never did I think I was going to be quoting columnist James J. Kilpatrick, but even he says: it is an "unenforceable, unintelligible amendment to the Constitution that will get us nowhere."

And believe it or not, even George Will is on our side, or my side, on this particular issue. George Will said it is a "hoax" and a "trivialization of the Constitution."

And lo and behold, that leftwing Congressperson from the House, author of the infamous Hyde amendment, even Congressman Hyde, called it "a gimmick."

Now, all of those rightwing conservatives cannot be wrong. Some of them must be right—wouldn't you agree? Kilpatrick, Will, and Hyde—what more could you ask?

The balanced budget amendment is a way of diverting attention from hard realities, by pretending there is a magic and painless solution. It takes President Reagan off the hook because it would never go into effect until after he has returned to the California ranch. It takes Senators and Congresspersons off the hook because they can point to it as a solution, rather than doing something about the problem.

There are a host of problems with this high-stakes attempt to put an economic gimmick into the Constitution—but let me list four.

First, it does not require a balanced budget because 60 percent of us can override the amendment. And the President and the Congress are still going to have the will to enact responsible budgets.

It makes no provisions for national emergencies, short of a formal declaration of war. And we should remember, we have not had a declared war since World War II.

It would create a nightmare of enforcement problems by flooding the courts with suits to cancel spending programs. A conservative judge on the District of Columbia Court of Appeals, Robert Bork, said:

> It would result in hundreds if not thousands of lawsuits around the country, many of them on inconsistent theories and providing inconsistent results.

And fourth, it would drive the country into a major depression if Congress tried to balance the budget during a severe recession. The result would be widespread unemployment and a collapse of programs to soften the blow of recession on the poor, the elderly, and the unemployed.

The balanced budget amendment is the biggest lemon now on sale to the American public. If you want to balance the budget, come with me to the floor of the U.S. Senate, and come up with your proposals to cut defense spending and to see to it that those freeloaders in the American corporate world, as well as those individuals who are using tax shelters to avoid paying any taxes, pay their fair share, and we could move a long ways forward in balancing the budget. We could do a far more effective job and do something much more important for America than enacting this constitutional amendment.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator. I do not know why, but I get the distinct impression that you have not changed your position on this amendment.

Senator METZENBAUM. No; as a matter of fact, I am thinking seriously about it, very seriously about it.

Senator HATCH. Senator DeConcini, our ranking minority member on the committee.

OPENING STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Sentor DECONCINI. Thank you, Mr. Chairman. My applause to you for once again leading the charge together with the chairman of the Judiciary Committee, Senator Thurmond, and for the steadfastness to bring about passage of the balanced budget amendment.

Our distinguished colleague from Ohio, who I respect greatly, as he knows, makes a most convincing argument as he did today, that the President cannot balance the budget. Here is a President who has talked more than any other President about a balanced budget, and yet submits outrageous deficits for Congress, and then puts the full court press on us to adopt his deficits of $186 billion for this year. As my good friend, Senator Metzenbaum, points out, this President cannot balance the budget. If Ronald Reagan is not prepared to balance the budget, I think the people of this country have to do it, and we have to be strong enough as their representatives to admit the failure of both Congress, this President, past Presidents, all the political rhetoric aside, we have to conclude that we cannot balance the budget.

I'm not sure about the argument made by my good friend from Ohio: "Will it really work." But I can tell the good Senator from Ohio, and I think he agrees, that what we are doing is not working.

The pending resolution, Senate Joint Resolution 13, is substantially similar to that adopted by this committee and that of the full Senate only 3 years ago. The principles are the same—plan for a balanced budget, do not permit actual outlays to exceed proposed outlays, and do not permit the growth of the Federal sector to exceed the growth rate of the nation as a whole. These principles have undergone rigorous debate over the past 5 years, and have withstood most of the challenges.

So we are here today, Mr. Chairman, to see what we can do to solve the problem. And it is easy to say, "follow me onto the floor, and I will balance the budget." We all know that that is a joke. No one here has proposed a balanced budget themselves, including this Senator. I have concluded, after laboring hard and listening to the fine speeches and arguments of the Senator from Ohio and others who oppose it that we are not willing to face the fact that we cannot balance the budget, nor can the President balance the budget. I am willing to take the risks, whatever they may be, in passing a constitutional amendment and letting our Constitution operate, hopefully bringing us to some fiscal sanity.

Thank you, Mr. Chairman.

[The prepared statement of Senator DeConcini follows:]

Prepared Statement of Senator Dennis DeConcini

Mr. Chairman, as you and I have done so often in the past, I want to restate my strong support for the balanced budget/spending limitation amendment. The pending resolution Senate Joint Resolution 13, is substantially similar to that adopted by this committee and the full Senate 3 years ago. The principles are the same: plan for a balanced budget; do not permit actual outlays to exceed proposed outlays; and do not permit the growth of the Federal sector to exceed the growth rate of the Nation as a whole. These principles have undergone rigorous debate over the past 5 years and have withstood all challenges.

As the size of the budget deficit has continued to escalate each year, it must be obvious to any observer of the budget process, that no workable system of setting rational fiscal policy exists under present law. It is my belief and that of the other Members who support Senate Joint Resolution 13, that creation of such a system will only come into being if a constitutional amendment is in place that calls for the norm of a balanced budget. We the Members need the club—some may call it the excuse—of a constitutional amendment. Congress and the President can ignore many things, but we don't lightly disregard a straight forward constitutional mandate.

The amendment before us today is flexible; it is the product of compromise; it is the result of thoughtful reflection. I support the amendment now more than ever and I will support the chairman in bringing the amendment to an early mark-up at the subcommittee and committee.

Senator **Hatch**. Thank you, Senator DeConcini. I just want to personally thank you for the leadership you have provided on this subcommittee, throughout the Judiciary Committee and on the floor. You have certainly participated in writing this amendment, in pushing it, and of course, helping it to come at least through the Senate last time, and with a large majority vote in the House of Representatives.

I also would like to point out that so has the distinguished Senator from Iowa, Senator Grassley, so we will turn to him at this time, and then will, hopefully, get to our witnesses.

OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S. SENATOR FROM THE STATE OF IOWA

Senator GRASSLEY. Mr. Chairman, I want to commend you for holding this hearing on a proposal that should have been made a part of the Constitution years ago and which I believe would have gone a long way toward assuring long-term financial stability both in the United States and in the international economy.

As a sponsor of the only statutory requirement for a Federal balanced budget, the so-called Grassley-Byrd amendment to the IMF bill that was passed in 1978, I am especially aware that nothing short of a constitutional amendment will keep Federal spending from exceeding its revenues.

Mr. Chairman, constitutions do bind governments, and statutes do not. While Congress has successfully ignored the statutory requirement of a balanced budget by 1982, it cannot ignore the Constitution for any action taken in violation of the Constitution as invalid, including any appropriation bills.

Mr. Chairman, in my own State of Iowa, thousands of small farmers and businesses are disappearing because they cannot meet today's high interest rates. Those high interest payments and the rates for next year's credit are kept at the highest real interest rate levels because lenders fear renewed inflation unless massive budget deficits are reduced.

Were Congress prohibited from spending more than it takes in, those interest rates would be at a much lower level; farmers could make their payments and afford next year's loans, and those businesses that go out of business today could get by. That is why Congress must act both to reduce the Federal deficit now, and there is no doubt in anybody's mind that this constitutional amendment is not going to serve the short-term problem, but we must, simultaneous with the effort to get the deficit down in the short-term, we must propose to the States an amendment to the Constitution for their ratification so that the Federal budget in the future will and must be balanced.

Thank you, Mr. Chairman.

Senator HATCH. Thank you, Senator.

We are now happy to turn to our witnesses. We welcome all of our witnesses this morning and appreciate the efforts that they have put forth to be here.

Our first witness this morning will be the honorable Richard Thornburgh, who is the Governor of the Commonwealth of Pennsylvania. In addition to expressing his own views, Governor Thornburgh will be articulating the policy of the National Governors Association.

I just want to say for the record that I have known Dick for a long time and have appreciated his leadership in his State and in the National Governors Association as well.

So we really welcome you to the committee, and we look forward to receiving your testimony. We are sure it will be very important to the committee.

Governor Thornburgh.

STATEMENT OF HON. DICK THORNBURGH, GOVERNOR, COMMONWEALTH OF PENNSYLVANIA, ON BEHALF OF THE NATIONAL GOVERNORS ASSOCIATION

Governor THORNBURGH. Thank you, Mr. Chairman.

I have submitted a statement to the committee, and I thought I might summarize that and then perhaps answer any questions that members of the subcommittee may have.

Senator HATCH. Without objection, we will place all statements in the record. We do appreciate summaries, and we appreciate whatever you have to say.

Governor THORNBURGH. I am pleased to be here today to present the views of the Nation's Governors on the need for a balanced budget amendment. I am here to preach what we as Governors must practice year-in, year-out, under the provisions of our State constitutions. We have been obliged to go through the agonizing process of balancing our budgets every year, while watching with dismay as Federal expenditures continue to systematically exceed Federal revenues in ever-increasing amounts.

The Nation's Governors are deeply concerned about Federal deficits approaching $200 billion per year. This concern led us to adopt a bipartisan resolution at the annual meeting of the National Governors Association earlier this year, calling for the Congress to act to secure the adoption of a balanced budget constitutional amendment. In this resolve, we joined with 71 percent of the American public, according to a recent nationwide Gallup poll, and we joined with the legislatures of those 32 States which have called for a Constitutional Convention to adopt a balanced budget amendment.

As you pointed out, Mr. Chairman, Congress came close to approving such an amendment in 1982, when more than two-thirds of the Senate and more than a majority, but less than the necessary two-thirds of the House, voted for adopting a balanced budget requirement in our constitution.

All of these supporters recognized the continuing simple wisdom of what Thomas Jefferson observed long ago—to preserve our independence, we must not let our rulers load us with perpetual debt.

The time has come to provide Congress and the President with those structural tools and constraints that have proved invaluable to States in balancing our budgets. In the last 25 years, while Federal budgets were in balance only once, every State in every year has matched revenues with expenditures. During the recent recession, 43 States had to cut costs, and 44 had to raise taxes to keep their budgets balanced. Was this because Governors and State legislators are wiser, more courageous, or better motivated than our counterparts at the Federal level? Obviously not.

It is because the people of our States have enacted constitutional requirements that our budgets be balanced. Without constitutional discipline, I suspect we would have had just as great difficulty exerting the executive and legislative discipline that made this record possible, as the Congress and the President have even today, for the same pressures, the same special interest groups, the same parochial viewpoints affect lawmaking at the State as at the Federal level. What is lacking at the Federal level is a mechanism to force a disciplined approach to bring these divergencies into harmony in a fiscally sound manner. In truth, both the executive and legislative branches are caught up in a system badly in need of structural adjustment, for the crafting of national budgets is a shared responsibility.

The balanced budget amendment is the key element in making such an adjustment, and while it has important support, doubters remain, as we have heard this morning.

Let me deal with certain objections that I have heard more often than others in an attempt to allay some of those fears.

First, it is argued that the amendment would clutter up or trivialize our basic document in a way contrary to the intentions of the Founding Fathers. I suggest this is wrong. The Founding Fathers clearly contemplated that amendments would be necessary to keep the Constitution abreast of the times, and this process already has been used 26 times.

Moreover, one certainly can speculate that the notion of a Federal Government consistently spending more than it took in was so alien to the thinking of 1787 that a balanced budget provision in the original document might well have been deemed superfluous.

Indeed, one of the major preoccupations of the Constitutional Convention that resulted in that document in 1787 was dealing with the problem of how to liquidate the post-Revolutionary War debts of the States in an expeditious manner. It is worth noting that the Treasury did not begin to systematically incur annual deficits until the mid-1930's, nearly a century and a half after the adoption of the Constitution.

Second, it is argued that the adoption of the amendment would not solve the deficit problem overnight. Absolutely right. And no such claim should ever be made by serious proponents of the amendment. Obviously, a period of time—perhaps 5 or even 10 years—would be required for the full phase in of a reduction to zero deficit. But during the interim period, budget makers would be disciplined to meet declining deficit targets in order to reach a final balanced budget by the established date. And it does not need much repetition to remind us that the adoption of a balanced budget amendment would unfortunately have no effect whatsoever on the nearly $1.8 trillion national indebtedness with which we have saddled future generations.

Third, it is argued that such an amendment would necessitate vast cuts in social service or military or other categories of expenditures. Not necessarily. It would be required that these programs be paid for on a current basis. Certainly, difficult choices will have to be made about priorities and levels of program funding in all areas. But the amendment's purpose is to discipline both the executive and legislative branches to actually make these choices and not to propose or perpetuate vast spending programs without providing the revenues to fund them.

The amendment would in effect make Congress and the President more accountable for the spending decisions they do make while in office, and I think that this would have a very healthy impact on the decisions themselves as well as the political process.

Fourth, it is stated a balanced budget amendment would prevent or hinder our capacity to respond to national defense or economic emergencies. This, I think, is an easy one. Of course, any sensible requirement would feature a safety valve to exempt the incurring of deficits to respond to national defense and economic emergencies, perhaps one requiring a two-thirds or three-fifths vote of the Members of both Houses of the Congress.

Incidentally, there would be nothing to prevent Congress from instituting "rainy day" funds that would set aside current revenues during good times to be used for countercyclical purposes during economic retrenchment; a practice currently followed in some 23 States.

Finally, it is argued that a balanced budget amendment would be more loophole than law and could easily be circumvented. If the experience of the Nation's Governors is any guide, this too is wrong. Requirements now in effect in all but one of the 50 States have served us well. The inclusion of a Presidential line-item veto, which is available to most Governors and also recommended by the National Governors Association, would assure that any congressional overruns should be dealt with by the President, and public clamour, the electoral process, and the courts would provide backup restraint on any tendency, unthinkable to me, to simply ignore a constitutional directive.

In the final analysis, most of the excuses raised for not enacting a constitutional mandate to balance the budget seem to rest on a stated or implied preference for solving the deficit dilemma through the political process—that is, responsible action by the President and the Congress. This, I regretfully submit, has been tried and found wanting again and again. The last attempt to establish guidelines for such a political process—the 1974 Budget Reform Act—has only contributed to mounting deficits, higher interest rates, a huge negative trade balance, and further discredit to the governmental process.

I believe this country is ready for a simple, clear, and supreme directive that its elective officials honor their fiscal responsibilities, and I believe that a constitutional amendment is the only instrument that will meet this need effectively. Years of experience at the State level argue persuasively in favor of such a step, and years of debate have produced no persuasive arguments against it.

In concluding, let me share with you the view of a distinguished American scholar and advisor to eight Presidents, who died only last week. Milton S. Eisenhower, in one of his last published commentaries carried in January by the Wall Street Journal, said, and I quote: "Without an amendment requiring the President and Congress to maintain a balanced budget, with exceptions to meet certain emergencies, our Nation faces disaster. We can yet avoid such a disaster by adopting a Constitutional directive mandating a balanced budget."

I suggest that we all move quickly now to accomplish this goal.

Thank you, Mr. Chairman.

[The prepared statement of Governor Thornburgh follows:]

PREPARED STATEMENT OF GOVERNOR DICK THORNBURGH

Good morning. I am here before you today to preach what 48 other Governors and I practice. We have been obliged to go through the agonizing process of balancing our state budgets every year, while watching with dismay as federal expenditures systematically exceed revenues. We are now at the point where annual deficits will well exceed 200 billion dollars if current federal policies are continued.

The nation's Governors are deeply concerned about the large federal deficits. This concern led us to adopt a bi-partisan federal budget resolution at this past winter's meeting of the National Governors' Association, a resolution in which we called for the enactment by Congress of procedural reforms, including a balanced budget constitutional amendment. In this resolve, we join with 71 percent of the American public, according to a recent nationwide poll, and with the legislatures of 32 states which have called for a constitutional convention to adopt a balanced budget amendment.

Congress came close to approving such an amendment in 1982 when more than two-thirds of the Senate, and more than a majority, but less than the necessary two-thirds, of the House voted for inserting a balanced budget requirement into the Constitution.

All of these supporters recognized the wisdom in what Thomas Jefferson had to say on this issue -- "To preserve our independence, we must not let our rulers load us with perpetual debt".

The time has come to provide Congress and the President with those structural tools and constraints that have proved invaluable to states in balancing their budgets. During the recent recession, 43 states cut costs and 44 raised taxes to keep their budgets balanced. It is doubtful that these actions would have occurred without constitutional requirements that their budgets be balanced. Without constitutional discipline, we would have had great difficulty exerting the executive and legislative discipline that made this record possible.

At the federal level, I believe Congress is not as innocent of, nor Presidents both past and present so blameworthy for, the fiscal problems we face today. Both are, I think, more victim than villain of rapidly evolving institutional dynamics. Between 1976 and 1983, for instance, Congress passed budgets (total authorizations and total outlays) higher than the budgets requested by Presidents on six out of eight occasions. If the budgets of these Presidents had been accepted, the current deficit could have been over $72 billion less than it is today.

Although not always in agreement with Budget Director David Stockman, I do agree with his broad assessment of the deficit problems we have today. According to Mr. Stockman, our major problem is the inexorable tendency in modern industrial democracies for government spending to grow faster than the economy and the companion tendency for both taxation and government deficits to rise along with it.

The rise of sophisticated single issue pressure groups, as well as other major political, economic, and social developments have rendered both Congress and the executive branch incapable of reinstituting control over an increasingly runaway federal deficit.

Both institutions are caught up in a system badly in need of structural adjustment. The balanced budget amendment is the key element in such an adjustment. While it has gained support, doubters remain. I have heard certain objections more often than others, and these are my responses:

First, it is argued, the amendment would "clutter up" our basic document in a way contrary to the intentions of the founding fathers. Wrong. The founding fathers clearly contemplated that amendments would be necessary to keep the Constitution abreast of the times, and this process already has been used 26 times. Moreover, one certainly can speculate that the notion of a federal government consistently spending more than it took in was so alien to the thinking of 1787 that a balanced-budget provision might well have been deemed superfluous. Indeed, one of the major preoccupations of the Constitutional Convention was dealing with the problem of how to liquidate the post-Revolutionary war debts of the states in an expeditious manner. It is worth noting that the Treasury did not begin to systematically incur annual deficits until the mid-1930s, nearly a century and a half after the adoption of the Constitution.

Second, the adoption of the amendment would not solve the deficit overnight. Right, but no such claim ever has been made by serious proponents of the amendment. Obviously a period, perhaps five or even 10 years, would be required for the full phase-in of a reduction to a zero deficit. During this interim period, however, budget-makers would be disciplined to meet declining deficit "targets" in order to reach a final balanced budget by the established date.

Third, such an amendment would necessitate vast cuts in social services or military or other categories of expenditure. Not necessarily. It would be required that these programs be paid for on a current basis. Certainly, difficult choices would have to be made about priorities and levels of program funding in all areas, but the amendment's purpose is to discipline the executive and legislative branches actually to make these choices and not propose or perpetuate vast spending programs without providing revenues to fund them. It would, in effect, make Congress and the President more accountable for the spending decisions they make while in office, and I think that this would have a very healthy impact on the decisions themselves.

Fourth, a balanced-budget requirement would prevent or hinder our capacity to respond to national-defense or economic emergencies. This is an easy one. Of course any sensible requirement would feature a "safety valve" to exempt the incurring of deficits to respond to national-defense and economic emergencies--perhaps one requiring a two-thirds or three-fifths vote of the members of both houses of Congress. There also would be nothing to prevent Congress from instituting "rainy-day" funds that would set aside current revenues during good times to be used for countercyclical purposes during economic retrenchment. This currently is done in 23 states.

Fifth, a balanced-budget amendment would be "more loophole than law" and easily could be circumvented. If the experience of the nation's governors is any guide, this, too, is wrong. Such requirements are now in effect in all but one of the 50 states, and have served them well. The inclusion of a presidential line-item veto, which is available to most governors, would assure that any congressional overruns could be dealt with by the President; and public clamor, the elective process and the courts would provide backup restraint on any tendency to ignore a constitutional directive.

In the final analysis, most of the excuses raised for not enacting a constitutional mandate to balance the budget seem to rest on a stated or implied preference for solving our deficit dilemma through the "political process", that is, responsible action by the President and Congress.

This has been tried and found wanting, again and again. The last attempt to establish guidelines for such a "political process," the 1974 Budget Reform Act, contributed to mounting deficits, higher interest rates, a huge negative trade balance and further discredit to the governmental process.

I believe this country is ready for a simple, clear, and supreme directive that its elected officials honor their fiscal responsibilities, and I believe that a constitutional amendment is the only instrument that will meet this need effectively. Years of experience at the state level have argued persuasively in favor of such a step, and years of debate have produced no persuasive arguments against it.

In conclusion, let me share with you the view of a distinguished American and advisor to eight Presidents, a scholar and former president of the Pennsylvania State University, who died only last week.

Milton S. Eisenhower, in one of his last printed commentaries, carried in January by the Wall Street Journal, said:

"Without an amendment requiring the President and Congress to maintain a balanced budget, with exceptions to meet certain emergencies, our nation faces disaster."

We can yet avoid such a disaster and I suggest that we move quickly now to do so.

Thank you.

Senator HATCH. Thank you, Governor Thornburgh.

As I understand it, the Governors Association supports the constitutional amendment concept. What was the vote in the Governors Association?

Governor THORNBURGH. The vote in the plenary session was 29 to 7, I believe.

Senator HATCH. Was it bipartisan?

Governor THORNBURGH. It was bipartisan. No one knows better than I that there are 16 Republican Governors and 34 Democratic Governors. [Laughter.]

As Chairman of the Republican Governors Association, Senator DeConcini, I admit to that imbalance with some trepidation.

Senator HATCH. As I understand it, you must at least have a 75-percent approval before something like this would be passed?

Governor THORNBURGH. Three-fourths, yes.

Senator HATCH. As a Governor of a State that has had to live within the constraints of a balanced budget requirement, how do you respond to those who suggest that such a requirement would impose a straightjacket on the fiscal policies of our Federal Government?

Governor THORNBURGH. Well, I think, speaking as the Governor not only of my State, but sharing the views of my colleagues, one is driven to follow Al Smith, and look at the record. States today are undertaking imaginative new programs in economic development, in education, and in those traditional areas of State responsibility, all constrained by balanced budget requirements, and none suffering from the need to match revenues with expenditures. As I indicated, even during the most recent recession, when most of the States were obliged to cut back on programs or to raise taxes, that was accomplished in such a way that did not disrupt the continuity of State operations in any way.

Senator HATCH. How would you respond to those who suggest that the distinctive responsibilities of the Federal Government are really different from those of the States and would make a balanced budget amendment far more unworkable at the Federal level rather than the State level?

Governor THORNBURGH. I think the only two that suggest themselves as being distinctly different from what the States do is the traditional responsibility of the Federal Government to provide for the national defense, and the emerging responsibility in this century for the Federal Government to assume some overall role with respect to economic policy.

As I indicated in my remarks, it seems to me that providing a safety valve for incurring of deficits to meet the Federal Government's responsibilities in those regards would take care of any objection with regard to the difference between what State governments do and what the Federal Government does.

Senator HATCH. How would you respond to those who would suggest that this balanced budget amendment approach is strictly a partisan effort by the Republicans to deflect attention away from the present budget difficulties. We heard Senator Metzenbaum pretty well blame this President for all the deficits that we have.

Governor THORNBURGH. Well, I would count noses, Senator Hatch. I note members, distinguished members of the Democratic Party who serve in the Senate here, who have expressed their views of the need for a constitutional amendment. I would once again refer to the bipartisan nature of the support that was forthcoming from the Nation's Governors and note that of those 32 State legislatures that are on record in support of a Constitutional Convention, many are controlled by the Democratic Party.

I do not think that this is a partisan issue. I do not think that those of us who support a constitutional amendment seek to gain any partisan advantage, because a constitutional provision is forever, in most cases, and it would bind or inure to the advantage of, as the case might be, the President and Members of Congress, whether Democrat or Republican, in years to come.

Senator HATCH. Thank you.

Let me turn to our ranking minority member, Senator DeConcini.

Senator DECONCINI. Mr. Chairman, I will be very short.

Governor, thank you for your leadership in this effort. We appreciate the Governors Association taking a strong position. I agree with you that it is a bipartisan effort.

What I do ask you—and I do not say this in any other way than just to get your response as a Governor that probably has not done this—what I find very interesting is that the Governors support this, and yet so many in the Governors Association are on record as against cutting grants to the States, mass transit, water projects, Corps of Engineer projects, revenue-sharing, and all of these things.

If you could just enlighten us, how do the Governors rationalize that, hey, you have got to balance the budget up there, you guys, but do not cut it out of us, or at least, leave it at 1985 levels?

Governor **Thornburgh**. If that were the position of the Governors, I would find some fault with it myself. But I think, to expand beyond the action taken on the balanced budget amendment at the annual meeting earlier this year, you will find that a genuine willingness was expressed on the part of those of us who have responsibilities in the States to share in a fair and balanced and comprehensive deficit reduction plan. I believe we have effectively abandoned our role as special pleaders and tried to assume a role that indicates that we recognize that this is everyone's problem.

Obviously, just as Senators and Congressmen under the present process, which does not mandate the tough decisions being made, we are going to be expressing our concerns about programs that affect our particular areas. That is as it should be, I think, because we have a role to play in cooperation with the Federal Government in meeting essential needs of our people.

But I think the overriding expression of support in recognition of how difficult it must be for those of you who have the responsibility to balance these competing interests to carry that responsibility out without any discipline being imposed by the people of the United States is, I think, the important message that I can convey to you today on behalf of the Nation's Governors.

Sentor **DeConcini**. Well, thank you, Governor. I think that message is being conveyed, and I guess it boils down to the idea that those people you represent are the people we represent, and we find some mixed messages here, in a very professional and legitimate sense. To be fair, we cannot cut all or a substantial part of the aid to the States, because that is more important than some other program, and it is one of the struggles we have. But I appreciate it——

Governor **Thornburgh**. I hear some of those same messages in Harrisburg, PA, Senator. And our whole political process is about making choices, sometimes, very tough choices. But it is very difficult, and I sympathize with the Members of Congress to be able to enjoy the luxury of deferring those choices or not making them, or conducting the Government's affairs on a credit card. I do not wish for that opportunity as a Governor, and I appreciate the fact that many of you do not enjoy that opportunity, so-called, as members of our highest legislature.

Senator **DeConcini**. Thank you, Governor.

Thank you, Mr. Chairman.

Sentor **Hatch**. Thank you, Senator DeConcini.

Senator Thurmond.

The **Chairman**. Thank you, Mr. Chairman.

Governor Thornburgh, we are delighted to have such a distinguished Governor with us today. Quite often, I have heard critics of the balanced budget amendment state that Congress could balance the budget without a constitutional amendment if it chose to do so. I would certainly agree that Congress has that authority.

However, in light of the fact that the Congress has balanced the budget only one time during the past quarter century, the last time coming 15 years ago, do you believe it is reasonable for our citizens to expect that Congress will voluntarily return to the long-lost balanced budget?

Governor THORNBURGH. In a word—no.

The CHAIRMAN. Governor, another criticism often heard from opponents of the amendment is that it is unenforceable, that Congress will somehow get around it, or worse yet, simply ignore it.

I must admit that I find this argument extremely alarming. To make such an argument is to say that Congress will not be directed in its actions by the very document it has sworn to uphold—the Constitution.

Do you believe that the Constitution has come to mean so little that Congress would take a constitutional mandate so lightly?

Governor THORNBURGH. No, I do not, Senator. And I think there are two reasons that recommend themselves as to the credibility of a constitutional amendment. First of all is experience, looking at what has happened at the State government. One would get the notion from some of the critics of a balanced budget amendment that the State courts are clogged with litigation over the enforceability of State constitutional provisions mandating a balanced budget. Such is not the case. Litigation, if it is ever carried out in connection with this mandate, is rare indeed, and to my knowledge, in my home State, over our 300-year history, has never proved to be a problem.

Second, and perhaps more importantly, I share with you, I believe, a view that the veneration and respect due and forthcoming for our Constitution would be the final sanction that would be used to promote respect on behalf of the executive and legislative branches for their responsibilities to adopt and manage the Government in such a way that preserves the balanced budget. I cannot envision it, would be unthinkable—that a body elected by the people, or a person elected by the people of this Nation, would flout a constitutional directive. It has never happened before, and I cannot imagine it happening under these circumstances.

The CHAIRMAN. After all, it was written in Pennsylvania and should be upheld, shouldn't it?

Governor THORNBURGH. That probably adds some lustre to it, Senator, right.

The CHAIRMAN. One more question. Section 3 of this proposed amendment as revised, possibly, reads that "Congress may waive the provisions of this Article for any fiscal year in which a declaration of war is in effect." That probably should be broadened a little bit to provide for emergencies. What wording would you suggest?

Governor THORNBURGH. I would think that a finding of national emergency that was made specifically by, perhaps, two-thirds or three-fifths of the Members of each House, which would place on the record a determination that such a safety valve was necessary for particular instances would be preferable to simply confining it to a declaration of war. There is some concern, I think, as expressed this morning, that many of our national defense responsibilities have arisen in this century during a time period when no declaration of war has been made.

The CHAIRMAN. Some have suggested that if such a declaration of national emergency was issued by the President as I understand it—you think it would be better if the Congress passed that?

Governor THORNBURGH. I think in view of the shared responsibility for obtaining a balance in the budget, that that action might well be taken jointly on submission by the President, but it certainly, I think, should involve the Congress as well.

The CHAIRMAN. Thank you very much.

Senator HATCH. Thank you, Senator.

Let me turn to Senator Heflin.

Senator HEFLIN. First, Governor, I wanted to ask you about the Democratic support. Of the 69 Senators that supported the amendment in the 97th Congress, a vast number of Democrats did support it, and I think that proves that it is a bipartisan effort.

As to the enforceability, I think you are a little more optimistic than I am without a provision. Obviously, many States for many years failed to acknowledge the reapportionment provisions of the State constitutions, and the courts in some cases determined that it was a political matter and within the jurisdiction of the legislature. The courts have never had to decide whether opening the Senate with a prayer violates the question of the separation of church and state, basically, on the concept that it is a deferral to a coequal branch of government in their decisionmaking.

In my bill, I have included the language of the Armstrong-Boren amendment, which was adopted by the Senate by six votes, I believe, and became a part of the amendment that was passed. It sets a ceiling on the public debt limit, and to raise the limit would require a three-fifths vote. This, in effect, makes the amendment self-enforcing, in that you cannot borrow any money without raising the limit, and without a three-fifth vote you must rely on the revenues coming in. I think there is a need for some enforcement provision. The courts have not taken jurisdiction a lot of time where Congress has failed to act on certain instances, and I believe that this provision is necessary.

Do you have any suggestions other than tying it to the national debt that might make it more enforceable?

Governor THORNBURGH. No, I think the point is well-taken about the difficulty of judicial enforcement of provisions such as this. As I say, to my knowledge, that has not been a problem at the State level.

I think the backstop, the ultimate backstop, for the enforceability of such an amendment is the enormous hue and cry that would be forthcoming from a public that perceived their elected officials as openly flouting a directive to balance revenues and expenditures. That is a political sanction, to be sure, but it is one, it seems to me, that would be far in excess of whatever objections might have been raised to a flouting of a direction to reapportion the legislatures in the several States.

I commend the Senator for the suggestion that he has made with respect to a self-executing provision. I have not had experience with that at the State level, nor do I know if my colleagues have, but I think it obviously addresses a problem of some concern.

Senator HEFLIN. Thank you.

Senator HATCH. Thank you.

We will now turn to Senator Simon.

Senator SIMON. Thank you, Governor, for your testimony.

As you heard earlier, I favor a constitutional amendment; I think we need it. I am very concerned about section 2 in this proposal, which ties expenditures to national income.

You mentioned that many States have a balanced budget requirement. Do you know of any State that ties the increase in expenditure to the increase in the gross national product, the national income?

Governor THORNBURGH. There are States that have adopted such provisions. I ran for office on a platform that included such a provision in the Commonwealth of Pennsylvania as a constitutional amendment; it was never adopted, but it has become somewhat moot since we have kept the rate of increase in spending below the rate of inflation in each year since I have been in office.

It seems to me that section 2—and I believe it would be clearly acknowledged—is an attempt to deal with a different problem, a problem that really is part of the overall question of balance and decisionmaking in framing a budget at any level of budget, private or public. What level of expenditure is appropriate? That, it seems to me, is a legitimate political question that is ripe for debate every year and every session. But the balanced budget amendment is merely designed, in my view, to make sure that whatever that level is, there are enough revenues there to fully fund without producing a deficit.

So I express no present view on the appropriateness of section 2, which I regard as a somewhat different question.

Senator HATCH. Would the Senator yield on that point?

Senator SIMON. Yes, I would be pleased to.

Senator HATCH. There are some 20 States, however, who do have tax and expenditure limitation provisions in their constitutional amendments that work very well for States. So it is not a new concept; but one that is widely adopted and works throughout the States.

Senator SIMON. Well, I would be interested in having for the record—and I do not know the answer—how widely that is done. My impression is that it is not done widely. But I think the Governor's point is absolutely valid, this is a separate decision, that is really not tied in to—or should not be tied in to—the balanced budget concept. It is a political decision that ought to be made from year to year. I think to do otherwise would be a real mistake.

There are very few things economists agree on. I think we can all agree on that. But one of the things they would agree on is, that in times of inflation Government spending ought to be slowed down while the Government absorbs as much income as possible to slow that distribution. I think all economists would agree on that.

This provision, section 2, would prevent us moving on what everyone regards as sound economics, in the event of inflation. How, I hope we do not have an inflation—but I do not know what is going to happen 10 years from now or 20 years from now or 30 years from now.

I guess I am making a statement rather than asking a question, Governor.

But let us assume we have a substantial recession. If there is a dip in the GNP, then Government ought to be a balancing factor, and Government ought to be spending more. And I think you would agree with that.

[Governor Thornburgh nodding head.]

Senator SIMON. For the record, the Governor is nodding here.

Governor THORNBURGH. I would say this, Senator—I think it is important if such a safety valve is present, that there be an other-than-majority requirement with regard to deficit spending during such a period and that a record be made and voted upon that expressly finds that the level of concern has risen to the point where the deficit is——

Senator SIMON. We agree completely on that, and that is why section 1 provides for that three-fifths majority.

Governor THORNBURGH. I might be a little tighter than that in specifying the areas where that three-fifths ought to be, as I indicated, in economic downturns or in national emergencies, rather than a three-fifths, across-the-board requirement.

Senator SIMON. Right. The problem right now is that no matter what happens, spending grows, whether it is prosperity or recession or inflation.

But section 2 gets into areas that do not deal directly with the economy. I hope this committee will take a look at that very, very carefully.

And let me just add, I was not previously aware, I regret to say, of Senator Heflin's suggestion on the enforcement mechanism. This proposal has some appeal to me, I say to my colleague from Alabama. But I do not want to commit myself.

Governor, we appreciate your testimony here. I think you have, on the whole, on the concept of the balanced budget and the weakness of section 2, I think you have helped to clarify where we are, and I thank you.

Senator HATCH. Thank you, Senator.

Senator Biden.

Senator BIDEN. Thank you, Mr. Chairman.

Governor, an unusual thing is happening around this place, and that is that for disparate reasons, people with varying political philosophies from both political parties are arriving, I think, at the point of critical mass in this place, and we are going to end up with some kind of a constitutional amendment. We have various varieties of constitutional amendments, as you are fully aware. And notwithstanding the fact that Governors of our States like to point to the actions, at a State level, I would imagine you would grant that there are some differences between your home State of Pennsylvania's budget and the Federal budget——

Governor THORNBURGH. Yes—ours is balanced, Senator.

Senator BIDEN. Yes, yours is balanced. Do you have a capital budget?

Governor THORNBURGH. Yes, we do. And I am glad you mentioned that, because I think that is another factor that ought to be looked at, perhaps beyond the purview of this committee, but in connection with balancing the budget, the adoption of a separate capital budget would make an enormous difference.

Senator BIDEN. I agree with you. As a matter of fact, comparing a constitutional amendment with a unified budget like we have to a constitutional amendment in a State like Pennsylvania is comparing apples and oranges—notwithstanding the fact that you and your colleagues in the legislature have exercised discipline, they are very different animals. And I wish we would stop—not you, Governor—but I wish we would stop these specious comparisons of State and Federal balanced budget amendments. They are irrelevant. Let me put it this way. They are no more relevant than comparisons to legislative proposals requiring counties to have balanced budgets, or school boards to have balanced budgets. You have a capital budget. Almost all the States we are talking about have a capital budget. But if we had a capital budget, we could argue, it could be argued, that you could have a surplus right now—you could argue that.

Governor THORNBURGH. I have never seen any figures. The most reliable figures that I have seen come from the GAO, which indicate that the reduction in the deficit by the adoption of a responsible capital budget at the Federal level would be about $30 billion. You can argue about that, but it would not convert the deficit into a surplus under any——

Senator BIDEN. My point is not that we do not need an amendment, but that I think we would all be better served if you, the Governors, and we, the Senators, would stop trying to point out our particular problems and how we are doing such a great job—not that you are doing that today, but generally speaking, that is usually the way this debate is conducted.

And here is the point I wish to make. I think we finally are reaching a consensus in the Congress and in the country that, for a whole range of reasons, a constitutional limitation of some kind is required, because the world has changed. No one, I suspect, thought it was needed as badly when we had $30 billion deficits, instead of having $200 billion deficits a year, out into the horizon, and beyond the Alleghenies—it just keeps going.

I want to ask you a question about an amendment proposed some time ago, 4 years ago, by your colleague from my State, the former Governor DuPont, one which I was very much taken by, and liked it so much after speaking with him that I introduced it here in the U.S. Senate. And it may speak to some of the concerns of the Senator from Illinois.

That is that it adds several sections, one of which says that "Total outlays of the Government of the United States during any fiscal year shall not increase at a rate greater than the rate of increase in the gross national product in the last calendar year ending before the fiscal year, unless Congress by a vote of three-fifths of the whole number of both Houses shall have authorized specific additional amounts of outlays for such fiscal year."

Is that not a way of getting at the concern of the deficiency in section 2 that the Senator from Illinois is talking about?

Governor THORNBURGH. Senator, I have not had any experience with those types of constitutional provisions. I know that Governor DuPont has strong feelings about its effectiveness in our neighbor State of Delaware, your State, and I merely, in responding to Senator Simon—and perhaps I was misunderstood—did not mean to express any disapproval of section 2, but simply that it was beyond the purview of the necessity for a balanced budget, involves separate questions, and deserves an examination on its own——

Senator BIDEN. I think you are right.

Governor THORNBURGH [continuing]. Because no matter what level of spending you have, whether it is constrained or unconstrained, the effect of a balanced budget amendment would be that that level of spending must be matched with a given level of appropriations. And that is the key, it seems to me, to solving the deficit problem.

Senator BIDEN. Well, some of us—myself included—are getting a little greedy here, because what we are trying to do, in fact—and maybe we should not be trying to do it—is to deal with two items here. It is not only a balanced-budget amendment, but I am not sure the American public would be happy at us balancing the budget at twice the tax rate.

We could balance the budget. We could balance the budget tomorrow. There is no problem with that. If there were a constitutional amendment this very day on the books, we would have a lot of Senators suffering from apoplexy right now. We would have my friend from Utah realizing there is a need to talk about revenues. We would have my friend from Illinois realizing there is a need to talk about major cuts in some entitlement programs. We would have my friend from California not sure what he wanted to do about it all—nor me. I mean, it would be very confusing right now, but we would not be able to solve it just one way.

I do not know anybody who suggests we could balance the budget by merely cutting spending in 1 year this year. So we would have to talk about revenue.

Governor THORNBURGH. With no disrespect, and mindful of your previous admonition, I say to you, Senator, welcome to the real world. [Laughter.]

Senator BIDEN. I agree, Governor.

Senator HATCH. Would you yield, Senator?

Senator BIDEN. Sure.

Senator HATCH. On that point, I think if we had an amendment in effect that required us to look at cuts and increases in revenues, I would not have any trouble in agreeing with you. The problem lies in increases in revenues with no restraint in growth of spending. I cannot remember the last time when we had a revenue increase result in a deficit decrease; I really cannot.

Senator BIDEN. I cannot remember the last time we had a deficit decrease.

Senator HATCH. Well, that is the point.

Sentor BIDEN. Well, at any rate, I would appreciate it, Governor, without taking much more of your time, if you would take a look at—and if you do not have a copy, we will give you a copy—the amendment to which I am referring, and maybe we will attach a few questions, and you might be able to, before the record closes out, respond to it.

Governor THORNBURGH. Fine.

Senator BIDEN. And I think that we are all coming to the real world—Governors, Senators, mayors. I notice even lately, the Governors Conference told us about balancing the budget, and they did not ask for as much Federal money as they usually do this time. So you are getting there, Governor; you are getting as close to the real world as we are, and I am glad to see we are all in the boat together.

Thank you very much.

Senator HATCH. Thank you, Senator Biden.

Thank you so much, Governor Thornburgh. We appreciate the articulate testimony you have given here today and the support of the Governors Association for this concept of the balanced budget amendment. We really appreciate it.

Governor THORNBURGH. Thank you.

Senator HATCH. We will turn at this time to Senators Armstrong and Wilson. I know Senator Armstrong was here earlier, but we have been told he wanted to testify at about 11 o'clock, so if his staff people will notify him, we will be happy to put him on.

But let's start with you, Senator Wilson, since you are here. We welcome you to the committee. We appreciate your leadership in this matter. You have added a lot to the debate since you have come to the Senate, and we appreciate having your testimony here this morning.

STATEMENT OF HON. PETE WILSON, A U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator WILSON. Thank you very much, Mr. Chairman, for the opportunity to address this distinguished committee on a subject that, apparently, there is approaching unanimity of agreement regarding its tremendous importance. I greet that with great relief; I find the comments that I have heard, just in the brief time that I have been sitting here listening, heartening.

This is an old story to Senator DeConcini and to you, Mr. Chairman, and to Senator Heflin. It is truly a bipartisan concern, and the approach that has been taken has enjoyed bipartisan support.

I am also pleased with the very articulate testimony that I heard from Governor Thornburgh, and I commend him for his leadership this morning and commend the Governors Conference for adopting the position that they have taken.

I would suggest that perhaps a model for the kind of thing that can swell his numbers might be found in the Congressional Leaders United for a Balanced Budget, CLUBB, as its acronym describes it, chaired by Congressman Craig, and which I have the honor to chair in the Senate.

Mr. Chairman, I think perhaps in the interest of your time, I will summarize this written testimony.

Senator HATCH. We will put the full written testimony in the record.

Senator WILSON. Thank you. I appreciate that very much, Mr. Chairman.

Let me come to focus upon how this great reform is to be achieved. Everyone knows that we have reached a circumstance that can no longer be tolerated, that our national debt now exceeds $1.7 trillion, that the interest on that debt exceeds $130 billion, now being the third-largest single item of Federal expenditure. We know that. We have come to the conclusion that it is an intolerable situation. It has placed us at the moment of the present wrenching debate.

Anyone who has observed the proceedings on the Senate floor in recent times has learned how difficult it is for people who are confronted not with the simple, easy choice between good and evil, but the choice between competing goods, faced with the necessity to actually set and keep priorities rather than merely talk of them.

Anyone who has witnessed that will understand the necessity for a measure of this kind.

Congress, simply stated, has collectively lacked the self-restraint to live within is income. And, with all respect to my friend from Delaware, I do not find, as different as are the functions of governments, a great deal of difference in people who serve at different levels. I have served in a State legislature, I have served in local government, and having served now for 2½ years in this body, I find the same agonizing, the same anguish, the same difficulty in making choices.

Senator BIDEN. And the same buck passing.

Senator WILSON. And very much the same buck passing.

Senator BIDEN. I have served in local government, too.

Senator WILSON. And for that reason, I think that there is a requirement that there be the same kind of compulsion, constitutional compulsion, that makes those in city councils and State legislatures across the land seem infinitely more responsible than the Congress.

The question is how we are going to bring about this constitutional compulsion as a check against our own inherent weakness, our collective weakness. Certainly, the strength of many has been shown in the courage they have demonstrated in casting some very tough votes.

There are two ways that this can come about. Either Congress itself can take the initiative, or Congress can, under a petition, a constitutionally permissible petition sent by two-thirds of the States, be compelled to act.

Now, the Senate, we know, has already passed this amendment or a version of it. We know that we have not received, though, the requisite vote in both Houses, and there is considerable doubt as to whether or not that is soon going to occur.

Well, the fact, Mr. Chairman, is that the States, who have had to live with this kind of a restraint upon their spending, have been increasing in the numbers that have added their voices to that constitutional petition to the Congress to take action.

For some time now, we have been stalled just two short of the required two-thirds. My State last year sought to become the 33d or 34th State to petition Congress through the use of the California initiative process. A ballot measure qualified for the November 1984 ballot. Two public interest groups—the National Tax Limitation Committee, and the National Taxpayers Union—led grassroots efforts to qualify the initiative. A survey indicated that some 72 percent of the Californians who were to vote upon that measure were in support of it. Unfortunately, the 72 percent never was permitted to make its voice heard, to send not a message but a mandate to Congress to act responsibly, because in fact, instead of finding it on their ballot in November, as they had expected when they had signed the initiative petitions to qualify it, they found instead in their ballot pamphlet 4 blank pages, because the California Supreme Court had removed, prior to the election, an initiative measure which had qualified under the normal procedure, and indeed, their high-handed action has been blistered editorially by the San Francisco Chronicle, which I think many of you know is not exactly a bastion of rightwing extremism, nor have they lightly engaged in court-bashing for the sport of it. But this is what the San Francisco Chronicle had to say. They said:

> The Court's six-to-one decision was explained in 58 pages of tortured legal reasoning that in sum seemed to conclude that the voters could not even consider the balanced budget initiative because, (1) the authors of the U.S. Constitution never meant for the people to have the right to force their legislatures to petition Congress for a Constitutional Convention. The argument that the initiative process was not even born until nearly 150 years after the Constitution was written was airily dismissed by the Court majority.
>
> (2) The authors of the initiative power in the California Constitution never meant for the people to have the right to force their legislature to adopt a resolution. They meant instead to be able to force them only to adopt laws, not resolutions.

Well, Mr. Chairman, I will not burden the time of this distinguished committee with all of the editorial. I would ask that it be submitted in its entirety for the record.

Senator HATCH. Without objection.

Senator WILSON. But let me just read the conclusion, one I think warranted by the judicial action involved.

> Such judicial arrogance and denial of the rights of the people have become too depressingly predictable from a court headed by Chief Justice Rose Bird and composed almost entirely of the appointees of Governor Jerry Brown.

Unhappily, the people were denied their right to express what was clearly their view as manifest in that survey, and that is that Congress, like the State government, like every county and city within the State of California, should live within its income.

We all know what happens when the Federal Government fails to live within its income and indeed if, in the shorter term, we do not succeed in significant deficit reduction, we know that awaiting us is not the unparalleled growth about which the President is rightly optimistic, but instead the alternative of reigniting the interest rates, reigniting the inflation, the epidemic unemployment and a plunge into an even worse recession than that from which we emerged 2 years ago.

So this is not an academic exercise, but again, if I am preaching to the choir, I simply say that the point is that there is the possibility that States other than California will not be so constrained by their courts and that, either by act of their legislature or by the initiative process, they will send us not a message but a mandate in that constitutional petition and tell Congress to convene a Constitutional Convention. And that, of course, is the fundamental difference in the two routes by which we come to this needed reform. Are we to amend the Constitution on the initiative of Congress, or are we instead to do so because Congress has been required by the States to convene a Constitutional Convention?

Those who are opponents of this reform are by and large opponents of the Constitutional Convention method of securing it. Many raise the specter of a runaway Constitutional Convention. If I can find it, I think that this has been addressed by this pointed statement made by a distinguished member of this body, a distinguished Senator, and an equally distinguished constitutional scholar—the late Sam Ervin—who called the specter raised of a runaway Constitutional Convention, quote, "a Constitutional ghost conjured up by people who are opposed to balancing the budget".

Now, I respect that there is a difference of constitutional scholarly opinion on this subject. I must say that I agree with Senator Ervin, prehaps because I wish to—but I would also concur that there is no absolute necessity that we go this route. I would be much happier if Congress were to take the initiative. And therefore, I commend Senator Hatch and Senator Heflin and Senator DeConcini and all the others who have cosponsored this important measure. Let Congress be the one that actually brings about this fundamental reform that no one can any longer doubt to be necessary to the fundamental health of this Nation.

Let us not have to deal with that collateral, enervating, debilitating debate which can be made irrelevant if Congress steps up to its responsibility. But if we are not to do so, then Congress must be warned that people are wiser, have more courage, if Congress defaults on its responsibility, than those that they have elected to represent them here. And if we fail, if we default, then I hope and think, and am indeed convinced, that there will be a 33d and a 34th State that mandates upon Congress that we effect this reform even if it be by the unnecessary requirement of a Constitutional Convention—one which several of us have sought means to limit to the exclusive subject of this required balancing of the budget.

Mr. Chairman, I will take no more of the committee's time. You have been generous already. I will only say that several of you are members of CLUBB, the bipartisan bicameral coalition of nearly 100 congressional members, which has been trying to build support for the initiative that is before you here. I will only say that I think the time has come. If, in fact, as Senator Biden has said, there is a critical mass, a consensus that can no longer be denied, then let us make that clear by moving expeditiously. I would hope that this subcommittee, and then the full committee would, at the earliest possible time, send this measure to the floor so that the Senate of the United States can then go on record as recognizing, as the people of the United States so clearly do, that we must live within our income, as they do, that we must balance the budget, and that if we do, we can look forward to the kind of noninflationary, solid, real, and sustained economic growth that will be the wellspring of all that we hope for for this Nation.

I suspect that without that initiative on the part of this subcommittee, we will find that we have to go to a Constitutional Convention, we will have to debate unnecessarily whether or not we will run afield. Let us not do that, Mr. Chairman. I know that the members of this committee are men of courage. I know that they are men of initiative and vision. I only await the opportunity to see the results of your early deliberation on the floor of the Senate, so that we can restore a great deal of faith and integrity to our own processes, which have been undermined and made dishonest by deficit spending, and so that we can restore the faith of the American people.

[The prepared statement of Senator Wilson and the San Francisco Chronicle article follow:]

PREPARED STATEMENT OF SENATOR PETE WILSON

Thank you Mr. Chairman for the opportunity to address this distinguished subcommittee on what is in my opinion one of the most important issues that Congress has before it this term. I am pleased to address this subcommittee not only as a Senator but as a Californian concerned with the continued economic strength and stability of this great Nation.

The balanced budget amendment enjoys overwhelming support in my home State of California. I am proud to have headed Californians to balance the budget with Congressman Bill Dannemeyer in 1984. To place a measure on the November, 1984 ballot, our coalition sought to use California's initiative process to require the State legislature to draft and pass a petition to Congress. Two public interest groups, the National Tax Limitation Committee, led by Lew Uhler, and the National Taxpayers Union, headed by James Davidson, led grassroots efforts throughout California in support of the initiative. Nearly 600,000 signatures were gathered on the initiative, though only 400,000 were needed. During our campaign, a poll conducted by Western Viewpoint Research showed that 72 percent of Californians supported the initiative.

Unfortunately, just prior to the election, California's Supreme Court, led by Chief Justice Rose Bird, once again failed to acknowledge the will of the people of California. In what can only be called undemocratic reasoning, the court denied Californians their initiative process right. Only Justice Lucas, a recent appointee to the court, dissented to the majority's tortuous, result oriented opinion. Californians were left with four blank pages on their November 1984 ballots, where the initiative should have been included. There is no doubt in my mind that had Rose Bird and her misguided brethren allowed the initiative to be included in the ballot, it would have passed overwhelmingly, making California the 33d State to call for a balanced budget constitutional convention—one shy of victory.

The California Supreme Court has ruled in favor of big taxes and big spending since California passed proposition 13 in 1978. The Bird court, comprised almost entirely of Jerry Brown appointees, has continually placed political ideology in front of judicial reasoning and restraint.

Nevertheless, the balanced budget amendment continues to enjoy overwhelming citizen support in California and throughout the Nation. This support is bipartisan and is found in all socioeconomic sectors of my State. Americans of all walks of life now realize more than ever that their financial futures may hinge on whether the amendment is added to our Constitution.

Despite the extrajudicial setback in 1984, I am very pleased that the California Legislature has just recently taken up this issue on its own accord. And, I want to believe that it will move ahead.

Mr. Chairman, there are those who oppose the petition process that is occurring in California and in other States such as Connecticut and Michigan, because they claim it will lead to a runaway constitutional convention, thereby threatening our precious bill of rights. This is a fear generated by those who will not limit Federal spending, and it is simply an unfounded assertion. The late Sam Ervin, a distinguished Senator and an equally distinguished constitutional scholar, called a runaway convention "a constitutional ghost conjured up by people who are opposed to balancing the budget." I assert that if there were a possibility of a runaway convention, then Congress should act nows on this amendment. For it is inevitable that the people of this great land will force us to call that convention.

Mr. Chairman, I am proud to serve as the Senate chairman of Congressional Leaders United for a Balanced Budget [CLUBB]. CLUBB is a bipartisan, bicameral coalition of nearly 100 congressional members which has been coordinating efforts in the Senate, House of Representatives and in the States to enact a balanced budget amendment. CLUBB is chaired in the House by Congressman Larry Craig of Idaho, whose dedication to the movement to pass a balanced budget amendment must be commended.

The United States is plagued by a national debt of $1.7 trillion. This year, nearly $130 billion taxpayer dollars will be used to finance this exorbitant spending. Interest payments now are the third leading national expenditure.

Mr. Chairman, the problem of increasing budget deficits poses an enormous threat to America's continued fiscal stability. Regardless of the economic mechanism used or the fiscal policy adopted, deficits continue to grow. Congress, no matter how well-intentioned, has been incapable of acting with the self restraint that is necessary to bring down our burgeoning budget deficits. One need only review the activities of the Senate during the past week to find ample evidence of this unfortunate truth.

A constitutional amendment requiring Congress to enact a balanced budget is a responsible and necessary vehicle to ensure that this Nation maintains its place as the world's economic leader and to ensure a bright financial future for all Americans.

[From the San Francisco Chronicle, Sept. 2, 1984]

UNBALANCED DECISION

In its decision last week that California voters do not have the right to vote on the Balanced Budget Initiative, the state Supreme Court has again thumbed its judicial nose at attempts to control runaway government spending.

It also displayed a dismaying degree of judicial arrogance by once more killing off a people's initiative before it has even had a chance to appear on the ballot.

In the latest case, *AFL-CIO* vs. *Eu*, the state's highest court has come down hard on behalf of big taxes and against the public's right to do something about them—as it has in case after case since the taxpayers revolt got under way with the passage of Proposition 13 in 1978. This time the court derailed, at least for the moment in California, the current attempt by voters to apply some brakes to federal government expenditures. And it has done so in the face of a staggering national debt that may grow by $200 billion this year alone and could total $2 trillion (that's $2,000,000,000,000) by 1986, according to some government estimates.

The initiative ordered off the November ballot was aimed at forcing the reluctant California Legislature to petition Congress for a constitutional convention to draft an amendment to the United States Constitution that would require the federal government to adopt a balanced budget every year. By so ruling, the court has thrown a roadblock in the way of efforts to come to grips, at long last, with the enormous national debt sword hanging over the American economy. It is just a temporary delay, we trust, since it takes the requests of 34 states to force Congress to act and 32 have already filed their petitions. Currently, resolutions or initiatives are awaiting action in five more states.

The Calfornia court's 6-1 decision was explained in 53 pages of tortured legal reasoning that, in sum, seemed to conclude that the voters could not even consider the Balanced Budget Initiative because:

(1) The authors of the U.S. Constitution never meant for the people to have the right to force their legislatures to petition Congress for a constitutional convention.

(The argument that the initiative process was not even born until nearly 150 years after the Constitution was written was airily dismissed by the court majority.)

(2) The authors of the initiative power in the California Constitution never meant for the people to have the right to force their Legislature to adopt a resolution, only to adopt laws.

(The argument that the court never took such a stand against last year's Nuclear Freeze Initiative, though it was similar in principle to the Balanced Budget Initiative, was kissed off on the grounds that nobody ever brought that issue before the court.)

The sole dissenter was newly appointed Justice Malcolm Lucas, who, in his first major opinion since joining the court a few months ago, showed he brings a fresh breath of good sense to the job. In his objection to the majority opinion, he charged that the court "has once again deprived the sovereign people of their precious initiative right" by removing the Balanced Budget Initiative from the November ballot. Noting that the same court had removed a 1983 reapportionment initiative from the ballot in much the same way, Justice Lucas expressed the reasonable fear that the decisions reflect "a disturbing trend of this court to reach out and prematurely decide constitutional issues" that could have been decided after elections if they passed.

Such judicial arrogance and denial of the rights of the people have become too depressingly predictable from a court headed by Chief Justice Rose Bird and composed almost entirely of Jerry Brown appointees. (Of the seven justices, five were appointed by Jerry Brown, one by Pat Brown and one, Justice Lucas, by current governor George Deukmejian.)

The Bird court has consistently ruled against measures with which it quite clearly disagreed politically. And it always seems to disagree with any kind of lid on public spending.

Here are just a few examples of the way this court has dealt with public spending issues in recent years:

Ordered a $207 million raise for public employees, despite a governor's veto.

Ruled that some transit and other districts could raise sales taxes, despite Proposition 13.

Ruled that taxes in some special districts could be raised by a simple majority vote of the taxpayers, not the two-thirds required by Proposition 13.

Ruled that cities can increase property taxes to finance public employee pensions, despite Proposition 13.

The court's latest blow to the tax-cutting movement may delight the big spenders in government, but the backers of the Balanced Budget Initiative are right when they warn that the ruling against the people's right to be heard merely delays the inevitable.

Senator HATCH. Thank you, Senator Wilson.

Are there any questions?

Senator DECONCINI. Mr. Chairman, let me just ask at this time if I could have the permission of the chairman to submit for the record some of the memoranda in support of the initiative process, both in the State of California and the State of Montana, which I supported, and I know the Senator from California did. I think it would be appropriate to put it in at this time in the record.

Senator HATCH. Without objection, we will place it in at this point.

[The following was received for the record:]

[In the Supreme Court of the State of Montana, No. 84-391]

MONTANA EX REL. HARPER, ET AL., PLAINTIFFS AND RELATORS, v. WALTERMIRE, DEFENDANT AND RESPONDENT; MONTANANS FOR A BALANCED FEDERAL BUDGET COMMITTEE, REAL PARTY IN INTEREST

INTEREST OF AMICI CURIAE

Sam J. Ervin, Jr is a former Justice of the Supreme Court of North Carolina (1948-1954), former United States Senator from North Carolina (1954-1974), a former member of the Senate Judiciary Committee, the former chairman of the Subcommittee on Separation of Powers, and a national protagonist of the Balanced Budget Amendment. He is the author of the Federal Constitutional Convention Procedures Act, reported to the Senate by the Judiciary Committee, *Senate Report No. 92-336*, 92nd Congress, 1st Session, 1961, and the accompanying legislation S. 215, which passed the Senate 117 *Cong. Record* S. 16,569 (October 19, 1971).

Taxpayers' Foundation is a non-profit corporation, incorporated in Washington D.C. It has taken a leading role in the study of the Balanced Budget Amendment and the ways by which such an amendment could be enacted.

SUMMARY OF ARGUMENT

The federal question presented by the case is whether it is in conformity with Article V of the federal Constitution to mandate egislative consideration of an Application o Congress, by an initiative amending the state constitution. Amici note that such a question is "by no means settled." *Uhler* v. *AFL-CIO* (Slip Opinion of Justice Rehnquist, September 7, 1984, attached as an appendix to this brief). Amici argue that the proper resolution of this question is to find such a mandate fully in conformity with Article V and protected by it. Amici further argue that the First Amendment to the United States Constitution protects the method chosen by the initiative to compel consideration by the legislature.

ARGUMENT

I. The Initiative Conforms With, and Is Protected by, Article V of the Constitution of the United States:

The initiative, by state constitutional amendment, mandates the legislature to consider legislative Application to Congress to call a convention for proposing an amendment on the balanced budget. The initiative does not itself purport to be such an Application. Consequently, much of Plaintiffs' argument is irrelevent. The recent California case of *AFL-CIO* v. *Eu* attached by Plaintiffs to their memorandum for example, involved, among other issues, an initiative that made direct Application by the electorate to Congress. Such an issue it not before the court.

The initiative does indeed refer to "this constitutional amendment adopted by the people of Montana" and direct its transmission to Congress, but nothing in this section of the initiative indicates a belief that such transmission would be an Application to Congress, nor is there any indication of a purpose to have such transmission treated as an Application. A fair reading of the initiative is that the initiative is focused solely on the Application being made by the state legislature.

Hawke v. *Smith* 253 U.S. 21 (1920) held that as only a legislature could ratify an amendment to the federal Constitution, a state constitution could not subject the legislature's action of ratification to vote by a referendum. *State ex rel. Hatch* v. *Murray* 165 Mont. 90, 526 P.2d 1369 (1974) followed *Hawke* v. *Smith* and removed a referendum on ratification of the Equal Rights Amendment from the ballot. Neither case addressed a state constitutional amendment mandating the legislature to deliberate upon initiation of the amending process under Article V.

The main federal question before this court, therefore, is whether the mandating of legislative consideration of an Application by a vote of the electorate conforms with Article V of the federal Constitution. In *Uhler* v. *AFL-CIO* Justice Rehnquist, acting as a circuit judge on an application for stay of the mandate of the California Supreme Court in *AFL-CIO* v. *Eu*, specifically addressed this question and held that it was an "important question." He noted that the California Supreme Court had resolved the question negatively. However, in regard to the United States Supreme Court and applicable federal precedents, he noted that the question was "by no means settled" (Slip Opinion, September 7, 1984, p. 2).

The proper resolution of the federal question is that the Initiative is in conformity with Article V. It is not only in conformity with Article V. It is protected by Article V.

The essential idea of Article V was to permit "the people," organized by States and acting by vote representative of the entire State, to participate in the correction of error in the Constitution of the United States. It was a bold idea, an unprecedented idea, for the Framers to anticipate the need for amendment of a national constitution. It was equally bold and unprecedented to provide a mechanism by which the people, not the general government, could require consideration of an amendment. It conferred upon the people a fundamental civil liberty, a civil liberty of such basic dimensions that it became one of the Seven Articles composing the original Constitution. Such a liberty is to be liberally construed.

Article V set up a channel by which the people could effectively propose alterations in the government. The Petitioners' fear that Congress should know the will of the people is not a basis for judicial intervention. As Amicus Sam J. Ervin, Jr. reported to the Senate, the Framers regarded the Convention . . . as an alternative safeguard available to the States whenever Congress ceased to be responsive to popular will and persisted in a refusal to originate and submit constitutional amendments for ratification.—Senate Judiciary Committee, "Federal Constitutional Convention Procedures Act. *Sen. Rep. No. 92-336*, 92nd Cong., 1st Sess. (1971) 4.

The Convention method was a commitment by the Framers to the proposition so vigorously expressed by Hamilton:

> The fabric of American empire ought to rest on the solid basis of The Consent of the People. The streams of national power ought to flow immediately from that pure, original fountain of all legitimate authority.—*The Federalist*, number 22.

Specifically, as to the Convention method of amendment, the common understanding of what was created was captured by Abraham Lincoln in his First Inaugural Address. Speaking of a possible amendment to the Constitution at a time of turmoil and crisis far greater than any crisis today, he did not suppose that action by Convention would exacerbate the tensions but said:

> This country, with its institutions, belongs to the people who inhabit it. . . . I fully recognize the rightful authority of the people over the whole subject [amendment of the Constitution], to be exercised in either of the modes prescribed in the instrument itself, and I should, under existing circumstances, favor rather than oppose a fair opportunity being afforded the people to act upon it. I will venture to add that to me the Convention seems preferable, in that it allows amendments to originate with the people themselves; instead of only permitting them to take or reject propositions originated by others, not especially chosen for the purpose, and which might not be precisely such as they would wish to accept or refuse . . . —Lincoln, "First Inaugural Address," March 4, 1861. IV *Collected Works*, ed. Basler, 1953), 268–269.

"The people" are those to whom the country belongs. The people are those whom Lincoln sees as originating the amendment to be considered by a Convention. He emphasizes the political nature of the amending process. He is true to Hamilton's insistence that the streams of national power ought to flow from the people.

It is in conformity with this basic understanding of Article V that the people should be able to mandate consideration of an Application by the legislature to Congress. Such a mandate is action by the people to whom the country belongs. Such action gets back to the pure, original fountain of political power.

The process of amending the federal Constitution is a federal process. On this point the words of Justice Brandeis for a unanimous Supreme Court in *Leser* v. *Garnett* are dispositive.

> . . . the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State. *Hawke* v. *Smith, No. 1*, 253 U.S. 221; *Hawke* v. *Smith, No. 2*, 253 U.S. 231; *National Prohibition Cases* 253 U.S. 350, 356.—*Leser* v. *Garnett* 258 U.S. 130 at 137 (1922).

A State may, as Justice Rehnquist indicated, require conformity with state procedural requirements (*Uhler v. AFL-CIO*, Slip Opinion, p. 2). A State may not interfere in the substantive process of making the Application (including mandated legislative consideration of the Application). The federal process, in Brandeis' words, "transcends" the limitations imposed. The proponents of the initiative exercise a federal civil liberty and claim a federal right not to have the process disturbed by the imposition of a new and arbitrary state standard unsupported by federal precedent or federal authority.

II. The First Amendment Insulates the Initiative From the Charge of Criminal Influence:

Plaintiffs ask the Court to interfere with the basic federal right granted by Article V. They also invoke a criminal provision (MCA 45-7-102) which would interfere with a right protected by the First Amendment to the Constitution of the United States.

Who do the plaintiffs suppose would be guilty of the criminal offense if the initiative should pass? Each and ever voter who votes in its favor? Who do they suppose may now be guilty of conspiracy to commit the offense for having put the initiative on the ballot? The difficult of answering these questions shows how far-fetched their contention is.

If their contention were correct there would be a serious conflict between the criminal law of Montana and the Constitution of the United States. It is established that the First Amendment protects from state bribery prosecution the open promise of a candidate of something of value to the voters as a whole, *Brown* v. *Hartlage*, 102 S. Ct. 1523 (1982). As Justice Brennan wrote for the Court:

> Brown's [the candidate's] statement can only be construed as an expression of his intention to exercise his public power in a manner that he believed might be acceptable to some class of citizens. . . . [His] promise to reduce his salary cannot be deemed beyond the reach of the First Amendment, or considered as inviting the kind of corrupt arrangement the appearance of which a State may have a compelling interest in avoiding. See *Buckley* v. *Valeo* 424 U.S. at 27.—*Brown* v. *Hartlage* 102 S. Ct. 1523, 1531 (1982).

A part, the initiative is the open expression of the voters' intention to exercise public power in a manner they believe beneficial to the State and nation. Its provisions for mandated legislative deliberation on the Application are within the ambit of the First Amendment. A fortiori, the initiative is protected from application of the criminal law of Montana because the initiative is part of a federal process guaranteed as a civil liberty by Article V of the United States Constitution.

CONCLUSION

For the foregoing reasons, the Court should dismiss the application for writ of injunction and other relief.

Respectfully submitted,

JOHN T. NOONAN, Jr.,
Counsel for Amici Curiae.

[Supreme Court of the United States, No. A-137]

LEWIS K. UHLER ET AL. v. AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS ET AL., ON APPLICATION FOR STAY

[September 7, 1984]

JUSTICE REHNQUIST, Circuit Justice

Petitioners ask that I stay a mandate of the Supreme Court of California prohibiting the placement on California's November 1984 ballot of a proposed "balanced federal budget statutory initiative." The initiative would have required the California Legislature to request Congress to call a Constitutional Convention for the purpose of amending the United States Constitution to require a balanced federal budget. If the legislature failed to act, the initiative would have directed the California Secretary of State, the nominal respondent in this case, to apply directly to Congress in behalf of the State's voters. At present, 32 of the necessary 34 States have formally applied to Congress to convene such a Constitutional Convention.

The Supreme Court of California ruled at the behest of respondents, the American Federal of Labor-Congress of Industrial Organizations, et al., who filed an original action in that court challenging the legality of the initiative under both state law and the United States Constitution. The constitutional provision at issue is that part of Article V which states that "[t]he Congress. . . on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments. . . ."

The California Court undertook to decide two clearly federal questions relating to the meaning of the word "Legislature" in the above clause: (1) whether that word encompasses the voters of a State who have power to enact laws by initiative, and (2) whether it includes a legislature not acting as an independent body, but forced to act by exercise of the initiative power. The court answered each of these questions in the negative, concluding that the word "Legislature" means the state's lawmaking body of elected representatives, acting independently of restrictions imposed by state law. These federal questions are important and by no means settled; however, because of California Court went on to hold the proposed initiative invalid on independent state law grounds, I am satisfied that a majority of this Court would conclude that there is an adequate and independent state ground for the California Court's decision.

After a detailed analysis of California law and a discussion of the treatment of similar questions by other state courts, the Supreme Court of California decided that important portions of the proposed initiative were not "statutes," as that term is used in the California Constitution, but were "resolutions," and were therefore not a proper subject of the initiative process under the California Constitution. *AFL-CIO* v. *Eu*, S. F. 24746, at 43-49 (Cal. Sup. Ct., Aug. 26, 1984). We have long held that we will not review state court decisions such as this, largely for the reason that decisions on the federal questions in such cases would amount to no more than advisory opinions. See *Michigan* v. *Long*, — U.S. —, 103 S. Ct. 3469, 3474-3476 (1983); *Herb* v. *Pitcairn*, 324 U.S. 117, 125-126 (1945).

Petitioners urge that the foregoing construction of the California initiative provision, although denominated a state law question by the California Court, is actually a "political question" as a matter of federal law and therefore not subject to decision on the merits by a state court. Petitioners base their "political question" claim on the decision of this Court in *Coleman* v. *Miller*, 307 U.S. 443 (1939). In that case four Justices of this Court adopted the position that the Court lacked jurisdiction to rule on questions arising in connection with the ratification of a constitutional amendment because all such questions were "political" in nature. But that position did not command a majority in *Coleman*, *supra*, and however this Court would presently resolve the issues raised in the *Coleman* case, I do not think a majority would subscribe to petitioners' expansive reading of the "political question" doctrine in connection with the amending process. Acceptance of petitioners' arguments would, in effect, mean that courts in the State of California or elsewhere would be powerless to prevent the placing on the ballot of initiative measures designed to play a part in the process of amending the United States Constitution even though such initiative proposals clearly did not comply with State requirements as to the necessary number of signatures, time of filing, and the like. In the light of later discussions of the "political question" doctrine in cases such as *Powell* v. *McCormack*, 395 U.S. 486 (1969), and *Baker* v. *Carr*, 369 U.S. 186 (1962), I simply do not think this Court would believe that petitioners' claim in this regard raises a substantial federal question. See also *Dyer* v. *Blair*, 390 F. Supp. 1291 (D.C. Ill. 1975) (three-judge court).

The application for a stay is accordingly denied.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS ET AL.; S.F. 24746

DISSENTING OPINION BY LUCAS, JUSTICE MALCOLM

I respectfully dissent. The majority, acting both precipitously and prematurely, has once again deprived the sovereign people of their precious initiative right. (See Legislature of the State of California v. Deukmejian (1983) 34 Cal. 3d 658 [blocking vote on reapportionment initiative].) In my view, the majority errs in at least three separate respects, by (1) selecting this case for preelection review, contrary to the well-settled rule favoring the initial exercise of the people's franchise, (2) misinterpreting the federal constitutional provision (U.S. Const., art. V) pertaining to the calling of a constitutional convention "on application of" the state Legislatures, and (2) strictly and narrowly construing the scope of the people's reserved initiative power under California law, contrary to the rule in dozens of prior cases.

I. Preelection Review:

The dissent of Justice Richardson in the foregoing reapportionment initiative case set forth the pertinent authorities which hold that, in the absence of a showing of "clear invalidity," we should not interfere with a scheduled election on an initiative measure but, instead, we should defer our review until after the people have had the opportunity to express their views. (Legislature of the State of California v. Deukmejian, supra, 34 Cal. 3d at p. 681 [dis. opn.]; see Broshnahan v. Eu (1982) 31 Cal. 3d 1, 4.) Even "grave doubts" regarding the validity of an initiative do not require preelection review. (Gayle v. Hamm (1972) 25 Cal. App. 3d 250, 256.)

Our recent preelection review of the 1983 reapportionment initiative was "the first time in 35 years this court has removed from the ballot a qualified initiative measure, thereby preventing the people of California from voting on a subject of great importance to them . . . ." (34 Cal. 3d at p. 681 [dis. opn.].) Today's decision, filed less than one year later, reflects in my view a disturbing trend of this court to reach out and prematurely decide consititutional issues which might have been rendered entirely moot by the results of the forthcoming election, and which in any event readily could be addressed after the election has been held.

What reason does the majority offer for breaching, once again, the traditional rule of judicial restraint? The majority asserts that "The present proceeding . . . challenges the power of the people to adopt the proposed initiative," supposedly a "proper ground" for preelection review (Ante, p., — [maj. opn. at p. —].) Surely, the mere "challenge" to an initiative is not enough to trigger such expedited, accelerated review, for such a challenge could be made in every case. Instead, we must first satisfy ourselves that the initiative is clearly invalid, i.e., clearly beyond the people's power to adopt. No such showing is made here.

As I will explain, the people indeed do have the power to direct the Legislature to apply to Congress for a constitutional convention. But even were grave doubts presented regarding the initiative's validity, there are good reasons for deferring our review until after the people have expressed their views and voted upon the measure. As real parties herein point out in one of their briefs, "Participation in the electoral process and ongoing public debate on this important issue will benefit the citizenry and their elected representatives. It will allow citizens to exercise their first amendment rights to express their opinions." The majority's ruling unfortunately terminates abruptly any widespread public debate by California citizens regarding a matter so crucial to their own, and their nation's, financial well being. Might not the Legislature, the Congress and the voters each have welcomed a public airing of this important issue?

In addition, I question the propriety or necessity of the "rush to judgment" exhibited in this case, resulting from the majority's attempt to file its decision before impending election deadlines. Most of the briefing in this case was completed only a few days prior to oral argument; we filed today's opinion only a few days after hearing that argument. How can this court, already swamped with hundreds of pending cases, expect to reach a reasoned determination of the complex issues presented herein under such adverse circumstances?

Finally, several well respected amici (former Attorney General Griffin Bell, former Senator Sam Ervin, and Professor John Noonan) have raised an additional argument against preelection (or indeed any) judicial review which strikes me as quite persuasive: A court, and especially a state court, should not pass upon the essentially political question regarding the validity of an application for a constitutional convention pursuant to article V of the federal Constitution. (See Coleman v. Miller (1939) 397 U.S. 433 [plurality opn., declining review of validity of state ratification of constitutional amendment].) Instead, we should defer to Congress, the body alone entrusted by the federal Constitution with the responsibility to receive and review such applications. As I indicate in the following part of this opinion, it is quite likely that Congress would conclude that the application is constitutionally valid. What possible harm could result from our deferring to Congress regarding this federal question?

II. Validity Under Federal Law—The Convention Clause:

Article V of the federal Constitution in pertinent part provides that Congress "on the application of the Legislatures of two-thirds of the several States, shall call a convention for proposing amendments" to the Constitution. Such proposed amendments "shall be valid . . . when ratified by the Legislatures of three-fourths of the several States, or by conventions in three-fourths thereof . . . ." Contrary to the majority herein, the challenged initiative measure is not in conflict with the foregoing constitutional provision. The initiative simply directs the Legislature to file the requisite application so that California may be counted as supporting the calling of a constitutional convention. Where is the "clear invalidity" under federal law in that procedure?

Thus, section one, subdivision (a), of the challenged initiative measure recites that "The People of the State of California hereby mandate that the California Legislature adopt the following resolution and submit the same to the Congress . . . ." The resolution which follows urges Congress to propose a balanced budget amendment to the federal Constitution and makes "application" to Congress for the calling of a constitutional convention to consider such an amendment. Assuming that, under California law, the initiative process may be used for this purpose (a subject I discuss in part III hereof), what basis exists for holding that the measure contravenes the federal constitutional requirements of article V? That article requires an "application" from the Legislature; the challenged measure is designed to provide such an application.

This is not a case where the voters are attempting to abrogate prior completed legislative action. (E.g., Hawke v. Smith (1920) 253 U.S. 221, 227-230; Barlotti v. Lyons (1920) 182 Cal. 575, 578-584.) In both Hawke and Barlotti, the state Legislatures had already ratified the 18th Amendment ("prohibition"), by joint resolution. Nevertheless, referendum petitions were thereafter circulated for the purpose of submitting the question to the voters for their approval or rejection. Both courts quite properly held that, under article V of the federal Constitution, the term "Legislature" refers only to the official representative body or bodies of the various states, rather than to the legislative power itself, as exercised through the referendum. Accordingly, the filing of the joint legislative resolutions exhausted the ratification process. As stated in Hawke, ratification "is but the expression of the assent of the state to a proposed amendment." (P. 229.) Because article V mandated that such assent be expressed by the "Legislation," the referendum process was deemed inapplicable and incapable of abrogating the prior expression of legislative will.

In the present case, in contrast to Hawke and Barlotti, no attempt is made to "undo" any prior, completed legislative act which already had triggered a federal constitutional process such as calling a convention or ratifying a proposed amendment. Instead, here the initiative process is being used to assure that such an act finally is undertaken by our Legislature. Article V does not purport to prohibit the use of the initiative process as one means of inducing a state legislature to act. Indeed, as the foregoing cases make clear, the sole concern of article V is that the request for a convention call take the form of an application by a state legislature. As previously discussed, that concern is satisfied here.

III. Validity Under California Law—The Initiative Process:

Is an initiative measure which directs the state Legislature to apply for a constitutional convention "clearly invalid" under California law? Clearly not. Before confronting that issue, however, we should first review certain fundamental principles which control our disposition. First and foremost, "All political power is inherent in the people.

Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require." (Cal. Const., art. II, §1.) A corollary to this is that "the legislative power of this State is vested in the California Legislature . . ., *but the people reserve to themselves the powers of initiative* and referendum." (*Id.*, art. IV, §1, italics added.) Finally, "The initiative is the power of the electors to propose statutes and amendments to the Constitution and to adopt or reject them." (*Id.*, art. II, §8, subd. (a).)

The majority would apply a narrow construction of the scope of the initiative power under the California Constitution. In the majority's view, directing the Legislature to apply for a constitutional convention involves neither a "statute" nor an "amendment" to the state Constitution. But use of such a narrow construction of the people's initiative right is directly contrary to the teachings of prior decisions of this court which require a liberal construction favoring the exercise of the initiative power.

Justice Tobriner set forth the applicable principles as follows: "The amendment of the California Constitution in 1911 to provide for the initiative and referendum signifies one of the outstanding achievements of the progressive movement of the early 1900's. Drafted in light of the theory that all power of government ultimately resides in the people, the amendment speaks of the initiative and referendum, not as a right granted the people, but as a power reserved by them. Declaring it 'the duty of the courts to jealously guard this right of the people' (Martin v. Smith (1959) 176 Cal.App.2d 115, 117 [1 Cal. Rptr. 307]), the courts have described the initiative and referendum as articulating 'one of the most precious rights of our democratic process' (Mervynne v. Acker (1961) 189 Cal.App.2d 558, 563 [11 Cal.Rptr. 340]). '[I]t has long been our judicial policy to apply a liberal construction to this power wherever it is challenged in order that the right be not improperly annulled. If doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.' (Mervynne v. Acker, supra, 189 Cal.App.2d 558, 563-564; Gayle v. Hamm, supra, 25 Cal.App.3d 250, 258.)" (Associated Home Builders etc., Inc. v. City of Livermore (1976) 18 Cal.3d 582, 591 [135 Cal.Rptr. 41, 557 P.2d 473, 92 A.L.R.3d 1038], italics added, fns. omitted.)

Since Associated Home Builders, we have often followed these admonitions regarding this constitutional right. (See, e.g., Brosnahan v. Brown (1982) 32 Cal.3d 236, 241 [186 Cal.Rptr. 30, 651 P.2d 274] [upholding the "Victims' Bill of Rights" initiative]; Fair Political Practices Com. v. Superior Court (1979) 25 Cal.3d 33, 41 [157 Cal.Rptr. 855, 599 P.2d 46] [upholding, in most respects, the Political Reform Act of 1974]; Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization (1978) 22 Cal.3d 208, 219-220, 248 [149 Cal.Rptr. 239, 583 P.2d 1281] [upholding the Jarvis-Gann property tax initiative]; see also Legislature of the State of California, supra, 34 Cal.3d 658, 683 [dis. opn.].)

Under a liberal construction of the "precious" and reserved initiative power, the people clearly would have authority to direct their own representatives in the state Legislature to apply for a constitutional convention. Such an initiative measure reasonably could be deemed a proposal for the adoption of a "statute."

There is no fixed, immutable definition of the term "statute." The term could refer to any formal, written exercise of legislative power, whether or not codified and placed within the California codes. The Code of Civil Procedure defines "statute" as any "written law" other than a constitution. (§1897; see also former Cal. Const., art. IV, §1 [initiative is the power to propose "laws"].) The people's written directive to the Legislature, mandating it to apply for a constitutional convention, certainly would qualify as a written law, i.e., a statute. Under this interpretation, we do not need to reach the further issue troubling the majority, namely, whether a legislative resolution applying for a constitutional convention is a statute. The statute involved here is the one enacted by the people, directing the Legislature to submit that application.

For example, a recent initiative measure in part required the Legislature to adopt provisions implementing the right of crime victims to monetary restitution. (Prop. 8, adopted at the June 1982 Primary Election, now art. I, §28, subd. (b).) Is not this procedural mandate from the people to the Legislature a "written law"? If so, then in what respects does the initiative measure before us fail to qualify as proposing such a law? Would it have made any difference if our measure had recited that its text would be formally incorporated into a new section of the Government Code? Surely such formalism cannot prevail over the people's right to be heard on matters of grave importance to them. Indeed, our prior cases require us to resolve all doubts in favor of the exercise of the initiative power, especially where the subject matter of the measure is of public interest and concern. (See Santa Barbara School District v. Santa Barbara Superior Court (1975) 13 Cal. 3d 315, 330 [state initiative measure declaring state policy on forced busing]; Farley v. Healey (1967) 67 Cal. 2d 325, 328-329 [local initiative measure adopting policy favoring immediate ceasefire and withdrawal from Vietnam].) As stated in the Santa Barbara case, "The people of California through the initiative process, have the power to declare state policy." (P. 330.) Surely, then, they have the power to direct the Legislature, as their representatives, to declare such policy on their behalf.

We should bear in mind that, unlike the limited referendum power, the initiative is not confined by any state constitutional restrictions upon its scope or use. (See Cal. Const., art. II, §§8, 9; Carlson v. Cory (1983) 139 Cal. App. 3d 724, 728 [repeal of state inheritance and gift taxes].) As Carlson observes, "there is nothing in our state Constitution which prohibits the use of the statutory initiative to repeal tax law." (P. 731.) Similarly, nothing in the state Constitution forbids use of the initiative to direct the Legislature to apply for a constitutional convention.

In a case upholding the validity of another statewide initiative measure (Prop. 13, adopted June 6, 1978, now Cal. Const., art. XIIIA), we acknowledged that the initiative may be viewed as a "legislative battering ram" aimed at "'tear[ing] through the exasperating tangle of the traditional legislative procedure and strik[ing] directly toward the desired end.' [Citation.]" (Amador Valley Joint Union High School District versus State Board of Equalization, supra, 22 Cal. 3d 208, 228.) Given the numerous rejected or abandoned bills aimed at accomplishing the end sought by the initiative measure challenged in this case, the foregoing description seems unusually apt. As in Amador Valley, "Although we express neither approval nor disapproval of the [measure] from the standpoint of sound fiscal or social policy" (p. 229), we should uphold it in recognition of the constitutional principle that "All political power is inherent in the people." (Cal. Const., art. II, §1.) Liberally construed, the initiative power applies here.

IV. Severability:

Time constraints do not permit me to explore at length the validity of those additional provisions of the challenged initiative which impose financial sanctions upon the Legislature in the event of its noncompliance, and which requires the Secretary of State to act in lieu of the Legislature should it fail to adopt the resolution within 40 days of voter approval. Suffice it to say that these provisions are entirely severable from, and do not affect the validity of, the provision directing the Legislature to apply for a constitutional convention. (See In re Blaney (1947) 30 Cal. 2d 643, 655.)

Indeed, each separate section of the initiative measure is made "severable" by the terms of the measure itself, and if any section or subdivision is held invalid, "the remainder of the initiative . . . shall not be affected thereby." I see no reason why the initiative may not be given effect, at least to the extent it directs the Legislature to apply for a constitutional convention. The distinct and severable questions of proper sanctions or alternative procedures in the event of noncompliance may be decided another day.

For all the foregoing reasons, I would deny the preemptory writ of mandate.

LUCAS, J.

AMERICAN FEDERATION OF LABOR-CONGRESS OF INDUSTRIAL ORGANIZATIONS ET AL. v. MARCH FONG EU, AS SECRETARY OF STATE, ETC., ET AL. (LEWIS K. UHLER, RPI) S.F. 24746

COUNSEL FOR THE PARTIES

For petitioners: Altshuler & Berzon, 177 Post Street, Suite 600, San Francisco, CA. (415) 421-7151.

Laurence Gold, Esq., 815—16th Street NW., Washington, DC. 20006. (202) 637-5390.

For respondent: (Secretary of State): Anthony Miller, Chief Deputy Secretary of State, 1230 J Street, Sacramento, CA 95814. (916) 445-3671 (8-485-6371).

For respondent: (City & County of SF): Thomas J. Owen, Deputy City Attorney, 205 City Hall, San Francisco, CA 94102. (415) 558-3282.

For real party in interest: John Mueller, The Hartford Building, 650 California Street, Suite 2650, San Francisco, CA 94108. (415) 989-6800.●

Senator DeConcini. If I could, I would just ask the Senator one question.

Senator Hatch. Surely.

Senator DeConcini. Thank you, Senator Wilson, for your fine effort in the initiative effort there. Do you have any other initiative approaches or strategies after the setback in California to either overrule the Supreme Court of California through the initiative process—and I wondered if you could share with us what you are trying to do, if anything?

Senator Wilson. Senator DeConcini, our immediate response was to take appeal to the U.S. Supreme Court. The Court denied hearing. Not surprisingly, they found independent State's grounds to exist for the denial by the California Supreme Court.

Senator DeConcini. Can the State of California, through initiative process, reverse that California case?

Senator Wilson. No, it has not. Very candidly, Senator, the initiative process, as you know, is not an easy one. It involves a Herculean effort either on the part of volunteers or, what is the far more frequent course of events, it requires Herculean fund-raising efforts in order to employ people to distribute petitions to people who in fact are eager to sign them, but not eager to either distribute them themselves or to find people who have them. And it has become a debilitating process, one initiative after another. In fact, I did not realize I was going to be quite so responsive to your question by asking that this editorial be submitted in full. Let me just say that in its opening it says:

> In its decision last week, the California voters do not have the right to vote on the balanced budget initiative. The State Supreme Court has again thumbed its judicial nose at attempts to control runaway government spending. It also displayed a dismaying degree of judicial arrogance by once more killing off a people's initiative—once more killing off a people's initiative—before it has even had a chance to appear on the ballot.

Senator DeConcini. Pete, the reason I asked the question is because it also happened in Montana, and I am worried that it may——

Senator Wilson. Yes. Unhappily, the California action was the basis, I understand, for the Montana court's decision.

Senator DeConcini. And it may be a precedent or a dampening of any other State trying to do that, and I was just wondering whether you and your advisors or group in CLUBB, of which I am a member, had any strategy to try to overcome that—and we can talk about that a little.

Senator Wilson. We candidly do not at this point, and your question is a good one, your point is well taken. At this stage in my State, I will simply tell you, having gone to the well several times, there was nothing we could do about this. We do not intend to let the issue die, but it is not an easy thing to combat what has been repeatedly described in this as judicial error.

Senator DeConcini. I thank the distinguished Senator from California.

Thank you, Mr. Chairman.

Senator Hatch. Thank you, Senator.

Senator Thurmond.

The CHAIRMAN. Senator Wilson, I want to commend you for your foresight and vision in this matter. The people of this country are demanding a balanced budget at the Federal level. If Congress does not act on it, there is no question in my mind that the States are going to pursue this matter until they get a convention.

I think that would be unfortunate, as I think it is much safer for the Congress to act on it. So I think you are exactly on the right track, and we appreciate your appearance.

Senator WILSON. Thank you very much, sir. I appreciate your leadership, offering Senate Joint Resolution 13. I think it is an appropriate thing that the chairman of this full committee is the one bringing this opportunity before the Congress, and so I thank you, Senator.

Senator HATCH. Thank you, Senator.

Senator Simon.

Senator SIMON. First, just for the record, the report issued by this committee on September 20, 1984 listed 20 States that have either statutory or constitutional limitations on what can be spent in one form or another. California is one of those.

Of those States, there are six that have constitutional provisions tied directly to what is called personal income, which I assume is the equivalent of our national income. So, 6 of the 50 States have that kind of provision.

The concern that I address to my colleague from California is with section 2. I favor a requirement for a balanced budget, but section 2 ties Government spending to the percentage of the GNP.

Now, let me just give you an example, if I may. There are those who are worried about the infrastructure of our country—roads, bridges, water and so forth.

Let us just say that 4 years from now, 5 years from now, we decided that we needed to spend about $20 billion a year on infrastructure. Let us just say that there was a felt necessity for increasing the gasoline tax 10 cents so that we would have another $20 billion for roads and bridges and so forth. The way this provision reads now, we are going to have to cut back on Social Security, we are going to have to cut back on something else.

Now, it may be that we should cut back on some of these expenditures. But I doubt that we ought to include that concept in the Constitution. In other words, is it wise to have section 2 as part of the Constitution? That is my question to you. Most of the 20 States that have limitations have statutory limitations rather than constitutional ones. Should we have this as part of our basic document, or is this something that we ought to deal with by statute rather than in the Constitution?

The CHAIRMAN. Senator, would you permit an interruption?

Senator SIMON. I would be pleased to yield to the Chair.

The CHAIRMAN. Section 2 provides that:

> Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending . . . unless—

and here is what I want to call to your attention—"unless a majority"—this will not take three-fifths—

unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts, and such bill has become law.

In other words, they could pass any bill. So this just takes a majority, and I want to call your attention to that.

Senator SIMON. Yes. If my colleague from South Carolina, and the distinguished chairman of the committee, will yield, if it means that we can simply do it very, very readily, then there is no point in putting it in the Constitution.

How do we define national income? There are a number of little crevices in this thing that I do not know that anyone knows what they mean. And I guess my instinct is if the interpretation of the gentleman from South Carolina is correct, then there is no point in having this in the Constitution.

Senator WILSON. Senator, I would disagree, respectfully. I would say that I think there is value. In the first place, the value in placing it within the Constitution and making this a constitutional compulsion is that it is a far stronger compulsion, far more effective, than if it is a statutory thing which the future Congress can easily amend out of existence. We have not yet achieved this. Clearly, we have not come easily, even to the concept of a balanced budget. We have rhetorically, but we are far from it in fact.

My State has a constitutional provision. It has not in any way hamstrung that State. It is, as has been pointed out, different in that we do have a capital budget, and local governments have a capital budget.

The point is, I would say that if the remedy which Senator Thurmond has set forth is contained in the Constitution, it is nonetheless available, and I think he is right—it is not an unsuperable burden. I think it does address the concern that you have. But I think that this statement should be contained in the Constitution of the United States.

Senator SIMON. If my colleague will yield, and then I will yield back to the chairman, I would point out that your State constitution, according to this document, anyway—I am not that familiar with your State constitution—in fact is more flexible than you suggest in that it also has, for example, a population growth factor as to what can be spent, if this document is correct that we have here, the report of the committee of last year.

The Governor of Pennsylvania hit it right on the head; section 2 addresses a completely separate problem. Today we should focus our energy on how to balance the budget. Section 2 merely limits the growth of Government. It does nothing to balance the budget.

Most other problems ought to be dealt with in statute, unless there is an absolute necessity for dealing with them in the Constitution.

Senator WILSON. I think there is an absolute necessity for dealing with this one in the Constitution.

Senator SIMON. All right.

Senator WILSON. And incidentally, the provision to which you have referred and the kind of thing that was being discussed by you with Governor Thornburgh and others really relates, I think, to a spending formula. And there are a variety of ways that that can be done. You can tie it to a percentage growth in GNP. You can tie it to population growth.

I authored a charter amendment for my city that proposed a formula that allowed growth in spending, that was a function of population increase, the percentage of population increase, and three-quarters of the percentage increase in inflation. And that was the spending cap above a base year.

So, we are talking about a spending cap. But what this provision states is that if you decide legislatively that you are going to have a particular formula that allows permissible growth in spending, that you will match that with income.

Senator SIMON. No, that is not what this particular provision says. I think that is the general impression. This provision says if you increase the gasoline tax 10 cents because of road and bridge problems, then you have got to cut back on Social Security, then you have got to be cutting back on other things.

And my point is that second decision is a legislative decision that we should not be putting into the Constitution. I join you in wanting to mandate a balanced budget. But I think we need to maintain legislative flexibility. We do not know what kinds of inflation, recession, and other problems we are going to encounter so this particular provision troubles me a great deal.

I thank you, my colleague from California, and Mr. Chairman.

Senator HATCH. Thank you, Senator Simon.

I want to thank you, Senator Wilson, for being here and for your leadership in these matters. We lament the problems you have had in California, because I think it is very harmful to the people and disruptive of the process for a court to overturn what the majority of the people seem to agree on. But that is California, and that has certainly been the record of your supreme court.

Senator WILSON. Well, it has recently, Mr. Chairman. The record of the California Supreme Court for decades prior to that was that the court bent over backward to sustain the initiative process and to afford the people the opportunity to vote on a measure once it had qualified for the ballot. It is only these last two decisions that have shocked the legal community and, I think, the citizenry generally that have provoked editorials as strong as this one.

Senator HATCH. Well, I note that your State has a continual problem, and the excitement that has been generated with regard to the reelection of your chief justice has really created substantial political heat out there in California. However, that as it may, you sure have had a difficult time with that supreme court.

Senator WILSON. That is true. You begin to understand why.

Senator HATCH. The only thing that makes me wonder what might be worse is the fact that the 9th Circuit Court of Appeals was reversed 27 out of 28 times by the Supreme Court last year?

It seems to me that in your State of California you have some real judicial problems.

Senator WILSON. We have work to do, Senator, there is no question about that. Judicial appointments can be a legacy that stay with you a long time.

Senator HATCH. Thank you, Senator. We appreciate having your testimony today.

Senator WILSON. Thank you, Mr. Chairman.

Senator HATCH. Our next witness will be the Honorable Manuel Johnson, Assistant Secretary of the Treasury. Dr. Johnson will be representing the official position of the Treasury Department today. We are very happy to have you here and look forward to receiving your testimony and asking a few questions.

So we will turn the time over to you.

STATEMENT OF HON. MANUEL H. JOHNSON, ASSISTANT SECRETARY OF THE TREASURY, WASHINGTON, DC

Mr. JOHNSON. Thank you, Mr. Chairman.

I will present a relatively brief prepared statement, cut short my submitted testimony, and I understand that it will be available for the record.

Senator HATCH. We will without objection make all written statements a part of the record.

Mr. JOHNSON. Mr. Chairman and members of the committee, it is a pleasure to be with you today to discuss a proposal that would amend the Constitution to require a balanced budget.

The President and the administration endorse strongly enactment of a balanced budget amendment to help restore fiscal responsibility to the Federal Government. Recently, the President reconfirmed his strong support for a constitutional amendment mandating a balanced Federal budget.

In his last State of the Union Message, he requested that the Congress enact such a measure. The last time a vote was taken in the Congress, in 1982, a balanced budget amendment was approved by more than two-thirds of the Senate, and by more than a majority, but less than the necessary two-thirds of the House.

The public is overwhelmingly behind the concept of a balanced budget. A survey last year revealed that nearly 85 percent of those polled favored a balanced budget amendment. Thirty-two State legislatures have approved resolutions calling for a constitutional amendment to consider the issue, and there are several more States, particularly Michigan and Connecticut, where action is possible soon.

It is clear to the President and to the public that something must be done to restrain the upward spiral in Federal spending. The Federal Government continues to absorb too great a share of the GNP. Between 1960 and 1984, the growth of Federal spending was much faster than the growth of the economy. As a result, the Federal Government's share of total output jumped from 18.5 percent in 1960 to 23.5 percent by 1984. Growth in Government spending has been accompanied by large increases in the Federal tax burden. By 1981, corporate taxes had more than doubled since the mid-1960's, leaving real after-tax, after-inflation profits below levels reached some 15 years ago.

In spite of tax reductions, personal income taxes as a percent of personal income rose from about 10 percent in 1975 to 11.5 percent by 1980, and had been projected to rise to over 15 percent by 1985 without any major tax reduction.

If we take account of Social Security tax increases, the average tax rates rose from 12.7 percent to 14.5 percent during this period and would have increased to nearly 19 percent by 1985. Marginal tax rates rose even faster, to sharply higher levels during the same period.

Throughout the economy, the rising tax burden seriously eroded incentives to work, save, and invest and contributed to the economic decline that we have experienced until recently.

In spite of the tax reductions in 1981, overall tax receipts of the Federal Government rose more than $300 billion from fiscal 1977 to fiscal 1984, and still we accumulated deficits of almost $800 billion.

Mr. Chairman, the only conclusion is that Federal Government spending continues to grow out of control. Some critics are quick to put the blame for large deficits on the administration's tax reductions and defense spending increases. This is just not correct, however. The revenue estimates in the President's fiscal year 1986 budget show that under administration policies, the Federal Government's tax claim on income in the 1985 to 1990 period would be between 19 and 19.5 percent of GNP—about a full percentage point or more above the nearly 18.1 percent share of the 1946 to 1970 period.

The national defense share of GNP is projected to rise only to the 7.5 percent level by 1990. This is well below the 9.7 percent share during the same 1946 to 1970 period. The driving force behind the rise in the budget deficit is not the administration's tax policy, but a combination of the past recession, which I think is extremely important, and the growth of Federal spending.

In spite of efforts by the President and some thoughtful Members of the Congress to trim nondefense spending, it continues to grow. If the Federal Government did not have such a dismal record on spending control, I might be more optimistic that we could move toward a balanced budget.

Indeed, favorable congressional action on the compromise spending package provisionally agreed upon by the Senate and the White House might change the public's impression that constitutional restrictions on budget planning are absolutely necessary. However, a demonstration that the current budget structure is capable of dealing effectively with the spending problem is yet to be seen.

I would feel much more confident that the political process was conducive to dealing head on with the structural budget problem if we had a balanced budget requirement. Over the years, the Congress has tried to respond to concerns about Government spending, deficits, and budgetary control. The most recent attempt to reform was the Congressional Budget Impoundment Control Act of 1974, which was intended to bring about congressional control over the budget process. Unfortunately, the reforms implemented by this act have not been successful in constraining Federal spending.

Congress has made other attempts to bring about fiscal responsibility, also. In 1978, for instance, Congress approved a statute requiring a balanced budget beginning in 1981. It is quite evident that this statutory approach for requiring budget balance has not been successful. Indeed, it was ignored.

Obviously, something is amiss in the budgetmaking process if the Congress, even after enacting legislation requiring budgetary discipline, frequently fails to live within its means. It has not always been this way. For most of our history through the 1920's, Federal spending ranged from between 1 and 3 percent of the national output. Spending for past or current wars accounted for the major variations in this share. During most peacetime years in this period, the Federal Government was in surplus.

Since 1930, a period spanning more than 50 years, there has been a budget surplus on only eight occasions, and half of those were shortly after World War II.

The pressure for ever-larger government is intense and very hard to resist. Those who gain directly or indirectly from Federal transfer or spending programs perceive the benefits of such programs very clearly.

However, the tax cost to benefit recipients seems low because taxes to pay for special programs are distributed throughout the entire population. Therefore, a net transfer of wealth from taxpayers to program beneficiaries takes place. It is only when we total up the bill and begin to experience the adverse consequences of overspending and overtaxing on economic growth, employment, living standards and interest rates that the costs become evident.

Transfer recipients have become powerful organized lobbyists because the benefits they receive are highly concentrated and quite obvious. Unfortunately, taxpayers in general are initially not organized as effectively because the additional taxes necessary to pay for these transfer payments are diffused among all taxpayers. Hence for a while, the burden on any one taxpayer seems fairly modest, until spending becomes inflationary, and incomes are forced by higher prices into tax brackets that were once reserved for the very rich.

In addition, Federal spending has increased rapidly over the years because of the emphasis on Keynesian countercyclical stabilization policies. In the past, the Government has enacted spending programs intended to help spend the economy out of a recession. Although these programs, such as public service employment were to be temporary, in fact, some turned out to be permanent. Thus, instead of being phased out after economic recovery was underway, spending continued indefinitely, expanding the Government expenditure base.

On the revenue side, it has long been too easy to raise the tax burden, primarily through inflation and bracket creep. Revenue increases have been largely automatic, seldom requiring legislation. Prior to enactment of the Economic Recovery Tax Act of 1981, inflation, a progressive Tax Code, and outmoded depreciation rules had combined to raise revenues in a particularly damaging fashion, striking directly at the rewards to saving, work effort, and investment. As inflation drove taxpayers into higher tax brackets, the rate of return on additional saving and work effort actually failed.

As inflation crippled the depreciation writeoffs, the after-tax cost of plant and equipment rose, and the rate of return fell. The reduced supplies of labor and capital retarded economic growth.

Reduced growth has cost the Government a large portion of the revenues it might otherwise have expected, and has required higher outlays in income-support programs. The Government has had more receipts, but it has collected them by driving tax rates higher on a smaller economy, and has had to spend them relieving the suffering that slow growth has caused.

Unfortunately, some individuals have not learned a lesson from our past mistakes. They continue to argue for increasing tax rates in order to balance the budget. This approach has not worked in the past, and it will not be successful in the future.

Economic growth and restraint on the growth of Federal spending are the keys to the deficit problem. This is why we need a balanced-budget amendment. Such an amendment will help restrain the size of Government as well as reduce the frequency and size of budget deficits, while maintaining sufficient flexibility to be workable and to function in a time of crisis. All these considerations prompted the administration to support the adoption of House and Senate joint resolutions during the past several Congresses, calling for a balanced budget and to restate its support for a similar resolution now pending in the current 99th Congress.

In addition, President Reagan has called for passage of a constitutional amendment as well as S. 43, Senator Mattingly's bill, that would permit the Chief Executive to veto individual items in appropriation bills without having to veto the entire bill.

Forty-three of our fifty States grant their Governors their right that can work as a powerful tool against wasteful or extravagant spending. This tool does not work automatically, however, but put in the hands of a President that is intent on slowing the growth of spending, it can be very effective.

Currently, Senate Joint Resolution 13 and House Joint Resolution 27 are pending before the Congress and would amend the Constitution to require a balanced budget——

Senator HATCH. Mr. Johnson, how much longer will you be?

Mr. JOHNSON. Just a moment.

Senator HATCH. If you can finish, then I will let you go, and we will submit questions to you. I have to get over to the floor. I have about 1 minute left.

Mr. JOHNSON. I am about to finish up now, Mr. Chairman.

Senator HATCH. OK. I just wanted to know if you were near the end.

Mr. JOHNSON. Yes; this is a good stopping point.

I am sure that the committee is familiar with these resolutions, and I was not really going to go into those in any detail. I just want to really stress once again that the administration and the Treasury Department endorse both of these joint resolutions and would also like to see the passage of a line-item veto to assist in supporting the balanced-budget requirement.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Johnson follows:]

PREPARED STATEMENT OF MANUEL H. JOHNSON

Mr. Chairman and members of the Subcommittee.

It is a pleasure to be with you today to discuss a proposal that would amend the Constitution to require a balanced budget.

The Need For An Amendment

The President and the Administration endorse strongly enactment of a balanced budget amendment to help restore fiscal responsibility to the Federal Government.

Recently, the President reconfirmed his strong support for a constitutional amendment mandating a balanced Federal budget. In his last State of the Union Message he requested that the Congress enact such a measure. The last time a vote was taken in the Congress in 1982, a balanced budget amendment was approved by more than two-thirds of the Senate and by more than a majority but less than the necessary two-thirds of the House.

The public is overwhelmingly behind the concept of a balanced budget. A survey last year revealed that nearly 85 percent of those polled favored a balanced budget amendment. Thirty-two State legislatures have approved resolutions calling for a Constitutional Convention to consider the issue, and there are several more States, particularly Michigan and Connecticut, where action is possible soon.

It is clear to the President and to the public that something must be done to restrain the upward spiral in Federal spending. The Federal Government continues to absorb too great a share of GNP. Between 1960 and 1984, the growth of Federal spending was much faster than the growth of the economy. As a result, the Federal Government share of total output jumped from 18.5 percent in 1960 to 23.5 percent by 1984.

The growth in government spending has been accompanied by large increases in the Federal tax burden. By 1981, corporate taxes had more than doubled since the mid-1960's, leaving real after-tax, after inflation profits below levels reached some fifteen years ago. In spite of tax reductions, personal income taxes as a percent of personal income rose from about 10 percent in 1975 to 11.5 percent by 1980 and had been projected to rise to over 15 percent by 1985 without any major tax reduction. If we take account of social security tax increases, the average tax rates rose from 12.7 percent to 14.5 percent during this period and would have increased to nearly 19 percent by 1985. Marginal tax rates rose even faster to sharply higher levels.

Throughout the economy, the rising tax burden seriously eroded incentives to work, save and invest, and contributed to the economic decline that we experienced until recently -- high inflation and unemployment, and slow growth which, in turn, have contributed to higher budget deficits.

In spite of the tax reductions in 1981, overall tax receipts of the Federal Government rose more than $300 billion from FY 1977 to FY 1984 and still we accumulated deficits of almost $800 billion.

Mr. Chairman, the only conclusion is that Federal Government spending continues to grow out of control. Some critics are quick to put the blame for large deficits on the Administration's tax reductions and defense spending increases. This is just not correct, however. The revenue estimates in the President's Fiscal Year 1986 Budget show that under Administration policies the government's tax claim on income in the 1985-1990 period would be between 19.0 percent and 19.5 percent of GNP -- about a full percentage point or more above the nearly 18.1 percent share of the 1946-1970 period. The national defense share of the GNP will rise only to 7.5 percent of GNP by 1990, well below the 9.7 percent share during the 1946-1970 period.

The driving force behind the rise in the budget deficit is not the Administration's tax policy but the combination of the past recession and the growth of Federal spending. In spite of efforts by the President and some thoughtful members of the Congress to trim non-defense spending, it continues to grow.

If the Federal Government did not have such a dismal record on spending control, I might be more optimistic that we could move toward a balanced budget. Indeed, favorable Congressional action on the compromise spending package provisionally agreed upon by the Senate and White House might change the public's impression that constitutional restrictions on budget planning are absolutely necessary. However, a demonstration that the current budget structure is capable of dealing effectively with the spending problem is yet to be seen.

Congressional Budget Reform

I would feel much more confident that the political process was conducive to dealing head on with the structural budget problem if we had a balanced budget requirement. Over the years the Congress has tried to respond to concerns about government spending, deficits and budgetary control. The most recent attempt at reform was the Congressional Budget and Impoundment Control Act of 1974 which was intended to bring about Congressional control over the budget process. Unfortunately the reforms implemented by this Act have not been successful in constraining Federal spending.

Congress has made other attempts to bring about fiscal responsibility. In 1978, for instance, the Congress approved a statute requiring a balanced budget beginning in 1981. It is quite evident that this statutory approach for requiring budget balance has not been successful. Indeed, it was ignored!

Obviously, something is amiss in the budget making process if the Congress, even after enacting legislation requiring budgetary discipline, frequently fails to live within its means. It has not always been this way. For most of our history through the 1920's, Federal spending ranged between 1 and 3 percent of national output; spending for past or current wars accounted for the major variations in this share. During most peacetime years in this period the Federal budget was in surplus. Since 1930, a period spanning more than 50 years, there has been a budget surplus on only eight occasions and half of those were shortly after World War II.

Expansion of Government

The pressure for ever-larger government is intense and very hard to resist. Those who gain directly or indirectly from Federal transfer or spending programs perceive the benefits of such programs very clearly. However, the tax cost to benefit recipients seems low because taxes to pay for special programs are distributed throughout the population. Therefore, a net transfer of wealth from taxpayers to program beneficiaries takes place. It is only when we total up the bill, and begin to experience the adverse consequences of overspending and overtaxing on economic growth, employment, living standards and interest rates, that the costs become evident. Transfer recipients have become powerful organized lobbyists because the benefits they receive are highly concentrated and quite obvious. Unfortunately, taxpayers in general are initially not organized as effectively because the additional taxes necessary to pay for these transfer payments are diffused among all taxpayers. Hence for a while, the burden on any one taxpayer seems modest, until spending becomes inflationary and incomes are forced by higher prices into tax brackets once reserved for the very rich.

In addition, Federal spending has increased rapidly over the years because of the emphasis on Keynesian countercyclical stabilization policies. In the past, the government has enacted spending programs intended to help spend the economy out of a recession. Although these programs, such as public service employment, were to be temporary, in fact some turned out to be permanent. Thus, instead of being phased out after economic recovery was underway, spending continued indefinitely, expanding the government expenditure base.

On the revenue side, it has long been too easy to raise the tax burden, primarily through inflation and bracket creep. Revenue increases have been largely automatic, seldom requiring legislation.

Prior to enactment of the Economic Recovery Tax Act of 1981, inflation, a progressive tax code, and outmoded depreciation rules had combined to raise revenues in a particularly damaging fashion, striking directly at the rewards to saving, work effort and investment. As inflation drove taxpayers into higher tax brackets, the rate of return on additional saving and work effort fell. As inflation crippled the depreciation writeoffs, the after-tax cost of plant and equipment rose and the rate of return fell. The reduced supplies of labor and capital retarded economic growth.

Reduced growth has cost the government a large portion of the revenues it might otherwise have expected, and has required higher outlays on income support programs. The government has had more receipts, but it has collected them by driving tax rates higher on a smaller economy, and has had to spend them relieving the suffering that slow growth has caused.

Unfortunately, some individuals have not learned a lesson from our past mistakes. They continue to argue for increasing tax rates in order to balance the budget. This approach has not worked in the past and it will not be successful in the future. Economic growth and restraint on the growth of Federal spending are the keys to the deficit problem.

This is why we need a balanced budget amendment. Such an amendment will restrain the size of government as well as reduce the frequency and size of budget deficits, while maintaining sufficient flexibility to be workable and to function in a time of crisis. All these considerations prompted the Administration to support the adoption of House and Senate Joint Resolutions during the past several Congresses calling for a balanced budget and to restate its support for similar resolutions now pending in the current 99th Congress.

In addition, President Reagan has called for passage of a constitutional amendment as well as S. 43, Senator Mattingly's bill, that would permit the Chief Executive to veto individual items in appropriation bills without having to veto the entire bill. Forty-three of our 50 States grant their governors this right that works as a powerful tool against wasteful or extravagant spending. This tool does not work automatically, of course, but put in the hands of a President that is intent on slowing the growth of spending it can be very effective.

A Summary of Current Amendments

Currently, S.J. Res. 13 and H.J. Res. 27 are pending before the Congress and would amend the Constitution to require a balanced budget. I am sure that the Committee is familiar with these Resolutions, which are virtually identical to those introduced during previous sessions of the Congress. Therefore, I will only briefly summarize what the amendment proposed in the Senate Resolution, would do.

Section 1 would restrain deficits. It would require Congress to adopt a budget for each year in which planned Federal spending could not exceed receipts, except in the case of a super-majority vote. In other words, the First Congressional Resolution on the Budget would be required to plan outlays that equal receipts including so-called off-budget spending. Should Congress decide to plan a deficit, it would have to approve a specific dollar amount of deficit spending by a three-fifths vote of the entire membership of each House of Congress -- that is, at least 60 of the 100 Senators and 261 of the 435 Representatives. The amendment charges the Congress and the President with ensuring that actual outlays (including off-budget) do not exceed the amount of outlays adopted in the budget statement, unless approved by a similar three-fifths vote. Language has been included in this Section to clarify an ambiguity in an earlier version of the amendment concerning the extent of the President's powers to ensure that actual outlays do not exceed stated outlays.

Section 2 would limit the growth of government. It would limit receipts so they could not increase at a rate faster than the growth of some measure of the previous year's income. That growth limitation could be overridden only by a bill directed solely to increasing taxes which was approved by a constitutional majority (50 percent of the total membership plus one) of both Houses of Congress and signed by the President.

Section 3 would require the President, prior to each fiscal year, to transmit to the Congress a proposed statement of receipts and outlays for that fiscal year consistent with the provisions of the article amending the Constitution.

Section 4 would allow Congress to waive the amendment for any fiscal year in which a declaration of war was in effect.

Section 5 defines the terms "outlays" to include all outlays of the United States except those for repayment of debt principal, and "receipts" to include all receipts of the United States except those derived from borrowing. These definitions would apply when Congress adopts the annual statement as required by Section 1 of the amendment.

Section 6 provides and makes clear that the Congress has the legislative authority to implement the powers and responsibilities of the amendment.

Section 7 states that the provisions of the amendment shall be effective as of the second fiscal year beginning after the amendment is ratified.

How the Amendment Would Work

Section 1 would not require a balanced budget statement. It simply sets more stringent voting requirements for an unbalanced budget. Congress can adopt an unbalanced budget statement if three-fifths of the entire membership of each House vote for it. Also, the Congress is not restricted in amending the budget statement during the fiscal year, as long as the voting requirements--three fifths of the entire membership of each House for a deficit, and an ordinary majority for a balanced budget--are met.

Thus, the flexibility of the budget process would be maintained. If for reasons of great national concern it were necessary for Federal spending to exceed revenues, Congress could vote to allow this to happen. However, by requiring Congress to otherwise "adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts," the amendment would establish a balanced budget as the budgetary "norm," which would be passed by a normal majority vote. An institutional bias in favor of deficit spending would thereby be corrected.

The Senate Joint Resolution also provides for deficits in wartime, permitting the Congress to waive its requirements for any year in which a declaration of war is in effect. A wide variety of events, not necessarily entailing a declaration of war may, however, pose threats to national security. The Administration has, therefore, in the past encouraged the Congress to amend the current language of the amendment to allow a broader range of events -- unforeseen events posing an imminent threat to national security -- to qualify for a waiver.

Section 2 would limit the growth of Federal revenues to the rate of growth of some measure of income unless Congress, by a majority vote of the membership of each chamber, decided to raise taxes to a higher level. For example, if the GNP rose by ten percent in the previous calendar year, tax receipts could not rise by more than ten percent in the succeeding fiscal year unless a majority of all the members of Congress explicitly voted otherwise.

This procedure contrasts markedly with the operation of the tax system in recent years, during which taxes, particularly the individual income tax, have grown more rapidly than GNP even without a Congressional vote. For whenever inflation reached a level of, say, 10 percent, the government collected roughly 15 percent more from personal incomes due to "bracket creep," and took in further revenue by causing depreciation to be understated. Indeed, the government profited substantially from inflation.

To some extent, this problem has been addressed by the indexation and Accelerated Cost Recovery System provisions of the Economic Recovery Tax Act of 1981. The indexation proposals in the Treasury Department's Tax reform package sent to the President late last year would help address further this problem. However, Section 2 would extend this safeguard against unlegislated tax increases to other forms of taxation as well. For example, it would prevent backet creep due to real income gains. There is no justification for the government's share of GNP to increase automatically as GNP grows, whether the growth is real or due to inflation. Just because the output of the economy is expanding is no reason for the government to expand faster than the economy's output. On the other hand, there is every reason to encourage the government to pursue sound policies to induce economic growth, thereby making additional government spending as well as private spending possible.

The amendment would strengthen further the principle of accountability by requiring Congress to vote on a specific bill to increase taxes instead of adding a tax increase as an amendment to another bill, as is often done now.

The Founding Fathers intended that the people would never be taxed without their express consent, which is why they required that all revenue bills originate in the House -- at the time the only chamber directly elected by the people. The Founding Fathers did not anticipate that a progressive income tax, coupled with inflation, would negate this principle. This amendment would restore the clear intent of the creators of the Constitution.

Section 5 of the pending Senate Joint Resolution addresses the problem of so-called "off-budget expenditures" -- expenditures that are made by the Federal Government and thereby add to the total public debt burden, but are not included in the regular budget.

In 1974, when this device was first adopted, off-budget agencies spent $1.4 billion. Such spending peaked at $21 billion in 1981 and has declined every year since then, falling to $10 billion in 1984. Although off-budget outlays are projected to rise in 1985, the President's 1986 budget reduces such spending sharply after 1985 and in 1987 and later years off-budget spending would become sizable negative amounts. Both for the sake of fairness and accurate economic accounting, this amount of spending should be added to the deficit. Section 5 of the proposed article would require this type of treatment, as would, incidentally, legislation proposed by the Administration. In fact, the 1986 budget treats the entities that are off-budget under current law as though they were on- budget. If this proposed change is approved by the Congress, or if the constitutional amendment is enacted and approved, Federal Government expenditures would no longer be divided into on- and off-budget outlays. The term "outlays" would mean just that-- all government obligations of taxpayer funds, with the single exception of repayment of debt principal.

Workability of the Amendment

Critics of the balanced budget/tax limitation amendment object to it on two principal grounds: that the amendment would be such an "iron commandment" that it might force the United States into contractionary economic policies or that it would be so ineffective as to be constantly circumvented.

Those who argue that the amendment is a "formula for economic decline" claim that the amendment would force drastic spending cuts during recessions. In fact, the amendment would do no such thing. Unanticipated revenue declines would not require immediate offsets in spending. The balanced budget rule would probably lead to an actual budget deficit when the economy is weaker than expected in the official Administration economic forecast and an actual budget surplus when the economy is stronger than expected.

It should be emphasized, however, that spending restraint *per se* does not necessarily constrain the economy. This is an old Keynesian notion that does not take into consideration other policy mechanisms that also have an impact on the economy. Thus, even if spending is restrained, aggregate demand would not fall if monetary policy is not tightened. If monetary policy is tightened, maintaining government spending might not prevent aggregate demand and eventually the economy from slowing. It is the policy mix that is important for assuring steady, sustainable economic growth. The amendment, incidentally, does not impose any constraints on the use of monetary policy.

In any event, Congress could continue to enact unbalanced budgets during an economic downturn if three-fifths of the members of both Houses agreed. While this standard is stringent -- as it should be -- it is by no means insuperable. If an economic crisis urgently demanded additional Federal spending, the mechanism for permitting it would be firmly in place.

Moreover, unforeseen spending needs could be accommodated in advance through the establishment of a reserve or contingency fund to cover outlays that exceeded their expected level. During the past two recessions, the increase in actual 1980 and 1981 outlays resulting from unexpected economic developments, higher unemployment for instance, was about 5 percent of total outlays each year. Thus, a reserve of 5 to 8 percent should be sufficient.

At the same time, economic downturns should not be automatic justifications for greatly increased spending. While certain payments, such as those for income support, would rise with higher unemployment levels, the Congress should be expected to make up at least part of the difference by further trimming back lower priority spending. The three-fifths vote requirement would ensure that this option is given a fair hearing. Similar procedures for prioritizing outlays and contingency funding have been used by businesses and state and local governments for many years.

The second major objection, that the amendment would be circumvented, is similarly without foundation. In particular, the terms "outlays" and "receipts" are explicitly defined both in the amendment and in the legislative history; there should be no dispute about their meaning, and thus no successful attempt to subvert the amendment's intent by redefining its terms.

Similarly, even if the President's proposal to bring off-budget agencies on-budget is not enacted, the amendment also specifically prohibits the exclusion of off-budget outlays from the budget statements. Thus, the present tactic of maintaining high spending levels by shifting programs "off-budget" could not be used to circumvent the requirement for a balanced budget statement.

It is true, of course, that the amendment will not eliminate spending pressures; this is neither possible nor necessary. The amendment will, however, provide a far more effective means for coping with these pressures, to ensure that they do not play the inordinate role they have in recent years in keeping spending high.

It is also true that adoption of the Amendment would not solve the deficit problem overnight, but serious supporters of the amendment have never claimed that it would. It might take several years before the budget could be brought back completely into balance. In the meantime, however, members of the Congress would be required to develop a sense of discipline when authorizing spending totals.

A final concern is the wisdom of addressing economic matters in the Constitution. This is a false issue; the Constitution already applies to many areas of economic activity. For example, it regulates certain taxing powers, the imposition by States of tariffs or duties, Congressional appropriation procedures, and the coinage of money. It also assigns Congress the authority to regulate interstate commerce. The addition of the balanced budget/tax limitation amendment to the Constitution, by establishing a standard for budget-making procedures, merely follows in this spirit.

Conclusion

The fact that thirty-two State legislatures have approved resolutions calling for a Constitutional convention to consider a balanced budget amendment, and several more States are considering such a resolution, shows that the amendment has massive support in State legislatures. The overwhelming popular support for a balanced budget amendment stems directly from Americans' understandable frustrations with years of high inflation, rising taxes, real declines in purchasing power, and a seemingly endless cycle of Federal deficit spending. Individual Americans who must live within their own means have every right to expect and demand that their government do so as well. Therefore, the Administration urges the Congress to adopt the Constitutional amendment now pending before it.

Senator HATCH. Well, thank you so much.

I have a number of questions for you, and I presume other members do, too. So we will keep the record open until 6 o'clock today for any written questions of any member of the full Judiciary Committee, and if possible, I would appreciate it if all witnesses would answer those questions.

I have got to run for a vote now, and then we will finish with our last three witnesses as soon as I return. So with that, we will recess for about 10 minutes until I can get back.

[Short recess.]

Senator HATCH. We will call at this time our last three witnesses, with an apology for the vote taking up so much time.

Our last three witnesses will be Roy L. Ash, Committee for Economic Development, former head of the Office of Management and Budget. Roy, we are happy to have you here once again.

We will also call Dr. Martin Anderson, senior fellow with the Hoover Institution and Stanford University, and former Assistant to the President for Policy Development. Our last witness will be Rudolph Penner, Director of the Congressional Budget Office and formerly a fellow with the American Enterprise Institute.

We are proud to have all three of you here with us today. We look forward to receiving your various testimonies. We will start with you, Mr. Ash, and then we will go to Dr. Martin, and then finish up with Mr. Penner.

Mr. Ash.

STATEMENTS OF A PANEL, INCLUDING: ROY L. ASH, COMMITTEE FOR ECONOMIC DEVELOPMENT, LOS ANGELES, CA; RUDOLPH G. PENNER, DIRECTOR, CONGRESSIONAL BUDGET OFFICE, WASHINGTON, DC; AND MARTIN ANDERSON, SENIOR FELLOW, HOOVER INSTITUTION, STANFORD UNIVERSITY, PALO ALTO, CA

Mr. ASH. Mr. Chairman, thank you for inviting my comments on Senate Joint Resolution 13.

I have a relatively brief statement to make. Its conclusion is that of the Committee for Economic Development; the specific reasoning is my own. First of all, I must join those who applaud the strong commitment of this committee and especially its chairman, to the goal of dealing decisively with the problem of Federal fiscal management.

The views that I will express are those of a staunch fiscal conservative, as I consider myself aligned with the most conservative of this committee.

From such a perspective, I have reached the conclusion, even as I firmly agree with your goals, that a constitutional amendment to balance the Federal budget disserves us conservatives most of all. And I will provide the specific reasons why.

Proponents of the amendment deplore the deficit in moving terms, and they portray in eye-, ear-, and mind-catching ways the many "elephant numbers" by which its seriousness can be dramatized. I can do the same, if called upon, no less than they.

Yet it is not sufficient merely to deplore the deficit in colorful language and the evil forces that lead to it, and then make that grand leap over all reason and merely assert that because the problem is so "humongous," resort to the ultimate political weapon, a constitutional amendment, is automatically the solution.

Both the seriousness of the deficit and the importance of the Constitution call for reasoned discussion of the pros and cons of calling on our Constitution to deal with the current fiscal crisis. This hearing can provide the opportunity for such rational and sound debate, even as have the preceding ones on this subject.

I will advance five specific reasons why conservatives most of all should oppose Senate Joint Resolution 13. We conservatives want deficit-reduction action now; we want effective spending and tax control processes in place; we generally look askance at court involvement in purely political matters. We are among those who want a strong defense; we prefer that fiscal balance be achieved more by expenditure reduction than by tax increases.

Senate Joint Resolution 13 not only does not achieve these goals, but its passage would bring about results just the opposite of those desired on all counts. Let us take each.

We need deficit reduction now, not later. A proposed constitutional amendment, whether initiated by Congress or by convention, would require ratification by 38 States to go into effect. There is good reason to believe that number of States will not ratify it when they come to realize that a significant part of the fiscal burden could be shifted to them if the Federal Government were pressed to the balance called for in the proposed amendment—notwithstanding the Governors Conference vote we heard about this morning. And even if 38 States did ratify the amendment, the elapsed time for all to sign up could be many years. Then, 2 further years would be necessary to incorporate the new system into Federal procedures.

So we are talking about an effective date probably 5 to 9 years from now, and even the proponents now are coming to agree with that. The problem is—or, I guess I should say the problems are—it may never pass, and while waiting interminably, or to infinity, the illusion of action will relieve the pressure to actually do the job that has to be done now. We do not need political illusion; we need action.

Second, the amendment would lead to loss of fiscal control, not greater control. We just would not know where we were. We could be spending and taxing even more than we are now, without knowing it or being able to control it. Why so?

Proponents of the amendment have struggled for years to find language that was not replete with truck-size loopholes. They have found it impossible because it is impossible. There is just no way to enshrine in the Constitution bookkeeping definitions that cannot be thwarted readily by a little imagination—and I mean just a little. In fact, we have been using fiscal imagination for years—why stop now?

The many ways of circumventing the best constitutional language can, and undoubtedly will, drive massive taxing and spending actions off the budget, underground, and out of public sight, where control will be totally lost.

Regulatory spending—that is, Government requirements that the private sector adopt, say, retirement, medical, unemployment, day care, welfare, or other programs, and pass the costs through in prices—are no less governmental programs than ones run through the budget. The costs do not disappear; they are just not a part of the official budget, but show up in prices instead.

The same Federal mandate can be directed to State and local governments. By regulatory spending, responsibility for the program actions are disassociated from the costs and the costs themselves are not measured—hardly marks of accountability.

And I have not even mentioned similar budget-avoiding subterfuges available through revolving funds, loan guarantees and the like. If the official arithmetic is required by the Constitution to look right, it will. But that will not stop the action—unless, of course, we further amend the proposed amendment to make it also unconstitutional to be imaginative.

Third, a constitutional amendment transfers important congressional powers to the courts. The Constitution is not a trivial document, as we here all know. It is meant to be binding in a very serious way. The other side of the coin is that it articulates citizen rights. Under the amendment proposed, every detail of Federal taxing, spending, and even bookkeeping would be subject to challenge, in the courts, by any citizen who could assert his own idea of how the books should have been kept and thus how taxing and spending should have been conducted to meet constitutional requirements.

Judge Robert Bork, who we heard quoted here today, has certainly made that point well.

The courts would take over jurisdiction of budget matters that are the essence of the political process. Untidy as that process is, judicial processes, including their interminable delays, are far from paragon.

Do we conservatives most of all look forward to even more court involvement in the country's affairs? We certainly would be inviting it.

Fourth, I believe, and I am sure others of this committee do, that we should not play around with our defense capability. Yet, if this amendment were operative, defense would become the tail end of the budget whipsaw. The best budget is necessarily an estimate. As the year progresses actual spending will vary from the estimate. But the constitutional amendment would require that actual outlays for the year conform to plan amounts, or someone will have violated the Constitution.

So let us assume we are racing through the year, are 60 to 90 days from its end, and find that $15 billion has to be removed from spending in these remaining days. Such variations do happen. Interest expenditures cannot be cut. Would Social Security and other entitlements be exempt? If they are not, who decides how to immediately cut which programs? There is no time for the regular executive-legislative processes to work. And if these large dollar programs were exempt, defense is the only other expenditure of a magnitude sufficient to accommodate the short-term cut requirements. Do we really want to subordinate defense preparedness to a higher order goal of balancing our national arithmetic? Yet, if quick defense money is not saved on short notice, someone goes to jail, so to speak, for violating the Constitution.

Last—for now, at least—the proposed amendment would encourage tax increases. To avoid violation of the Constitution, if expenditures were not held down, the Congress would have two choices. One would be to raise taxes and balance the budget at a higher level; the other, to officially excuse itself from balance. The former, raising taxes, would require a 50 percent vote of the whole number of both Houses. The latter, accepting a deficit, would require a 60 percent vote. This lack of symmetry suggests that the path of least political resistance would be the one requiring only a 50 percent vote—that is, to raise taxes rather than reducing expenditures. This does not sound like the conservative agenda to me.

These are just five reasons that fiscal conservatives most of all should oppose Senate Joint Resolution 13.

Mr. Chairman, I am prepared to elaborate on these reasons; to provide additional ones, for which there was not time; to especially counter the argument that if mandated budget balance is good for the States, it is good for the Federal Government; to suggest alternative solutions to the budget problem, and to generally move with you away from the polemic that has so often surrounded this subject to a reasoned discourse on a problem very important to your committee, very important to the Government in total, and to the whole country.

Thank you.

Senator HATCH. Thank you, Mr. Ash.

I notice we have a number of votes, and I cannot control that. All I know is they told me there would not be another one for a while.

Dr. Penner, how long do you think you will take, if you summarize your testimony, because I could go now and come back, or I could try to accommodate you and then submit questions.

Dr. PENNER. I have about six pages of reading, perhaps 10 minutes, I would think.

Senator HATCH. Then I think maybe what I had better do is go over and vote and come right back.

I am sorry to inconvenience you. I think we will go to Dr. Penner next and then Dr. Anderson, we are going to wind up with you today, if it is all right.

I am sorry, Roy, to inconvenience you as well, but I just do not know what else to do. I had better go over and vote.

I will come back as quickly as I can, and then we will finish. This is important.

[Short recess.]

Senator HATCH. Let us turn to Dr. Penner at this time and take your testimony. I apologize for the delay. I got grabbed by a number of reporters on my way over, and while I was there, and on my way back. So I did my best to get back as quickly as I could.

STATEMENT OF RUDOLPH G. PENNER

Dr. PENNER. No problem, Mr. Chairman.

I am pleased to testify today before this committee on the balanced budget amendment. Concern over the budget imbalance is clearly warranted and one that I share. I also support the objectives of reducing deficits and balancing government expenditures and receipts. It is not clear, however, that the problem is one of procedure rather than of substance. I think that it is the latter. However, I can certainly understand why proponents of such an amendment think it appealing.

ARGUMENTS FOR A BUDGET-LIMITING AMENDMENT

In the 19th century, and for the first part of the 20th, it was generally understood that government budgets should be balanced except under extraordinary circumstances such as those posed by wars. The rule was so widely believed that it disciplined government, and deficits were the exception rather than the rule.

The Keynesian Revolution of the 1930's, whatever its other merits, deprived us of the balanced budget rule. It provided an intellectual justification for using variations in budget deficits to influence aggregate demand and employment in the economy. If the new theory had been precise enough to prescribe a deficit of a certain size in each year, it, too, could have been a disciplinary force, because at least we would have known that that deficit should not be exceeded. Unfortunately, the theory was not precise, and the appropriate size for the deficit was something that economists and legislators could argue about at length. In effect, we were left without a disciplinary rule that had general approval.

There have been many attempts to invent alternative rules. For example, it has been argued that the budget should be balanced on average over the business cycle, or that it should be balanced if calculated as though the economy were operating at full employment. But no proposed substitute has ever gained the force of the old-fashioned, balance-by-the-budget rule. As a result, every decade since World War II has seen higher deficits on average.

The desire to amend the Constitution to require a balanced budget rule can be understood as an attempt to reinstate the disciplinary rule that seemed to serve us well prior to the Great Depression. The question is, "Could it be made to work, or would it do more harm than good?"

PROBLEMS OF IMPLEMENTATION

In implementing it, the question is, Can the Constitution be used to force a solution on the Congress? While there is general agreement that current deficits are much too high and should be reduced, there is little agreement about what the Nation's ultimate goals should be, how fast to approach them, or how best to reach them. Prohibition brought into sharp focus the problems involved in using the Constitution to force a mode of behavior on an unwilling public. The balanced budget amendment might create the same sort of problems because it can be easily evaded: There are numerous technical problems involved in implementing it, and it invites political stalemate.

EVASION STRATEGIES

Virtually any fixed constraint on public or private activity leads to the development of strategies to avoid controls. Forty-nine States have constitutions designed to balance their budget according to some definition or another. In some States, the process works well. In others, where there has been a conflict between political incentives and State constitutions, the latter has been evaded by creating independent agencies and through other devices.

In New York State in the 1970's, there was a proliferation of independent agencies, operating spending was redefined to be capital spending, and something called a moral obligation bond was invented to avoid constitutional restraints on borrowing. More generally, State balanced budget amendments did not prevent the rate of growth of State and local spending from far exceeding the Federal growth rate between World War II and the mid-1970's.

At the Federal level, even without the pressures of constitutional restraint, there are constant attempts to move government economic intervention outside of the budget process. A constitutional amendment would intensify these pressures; and once an activity is moved outside of the budget, there is the danger that it will grow completely out of government control.

My complete testimony, Mr. Chairman, discusses many very recent examples of the way budget accounting concepts have been manipulated, some of them which just illustrate Mr. Ash's point. So I shall skip to a point that Mr. Ash did not make, but which I think is really the most worrisome element of a constitutional amendment, and that concerns the possibility of an impasse.

POSSIBILITY OF IMPASSE

The Constitution empowers the Congress to do many things, but requires it to do only a few. In no case does the Constitution currently prescribe what decision is to be reached. The balanced budget amendment would require the Congress to adopt a balanced budget. The alternative would be for a super-majority—three-fifths of the Members—to approve an unbalanced budget. There is no provision in the amendment for how to settle the matter if there is neither a majority for a balance nor a supermajority for an imbalance.

The current budget debate in the Senate suggests that such an impasse could easily occur. The budget process now in place is much less demanding than that implied by a constitutional amendment, and yet it is far behind the schedule promulgated in the Budget Act. It is proving difficult to get a majority behind any single budget package. Imagine the problems of obtaining a supermajority for the deficits envisioned by various plans for the next few years. There is little doubt that each legislator sincerely believes that his or her favorite plan is superior to all others, and the key question is whether the Constitution could be used to force legislators to vote for plans they deem to be inferior. Individuals are often willing to compromise, and that is what makes the system work. But can they be forced to compromise; and if not, what next?

CONCLUSION

In conclusion, let me say that exploding deficits have created much frustration, and it is not surprising that we are diligently searching for procedural solutions to help us cope with a highly undesirable situation. There is little doubt that constitutional provisions work well if the public is strongly behind them. In the absence of such support, an artificial constraint can cause chaos, as Prohibition clearly showed.

With regard to a balanced budget, the evidence is ambiguous. In some States, balanced budget provisions have worked fairly well, while in the case of New York they worked very badly. They have not, however, greatly curbed the growth of State and local spending over the long run. Public opinion polls suggest an electorate that gives strong generalized support to the concept of a balanced Federal budget, but one that is also greatly averse to higher taxes and to most program cuts. Clearly, this makes the implementation of a balanced budget amendment a risky enterprise, because of the temptation and the many opportunities to evade it.

No constitutional provision can be guaranteed to work perfectly. If the public does not strongly support the actions needed to reach a balanced budget, the possibility of an impasse exists, and the evasion techniques that are likely to emerge are particularly inefficient and could significantly damage the economy.

Thank you.

Senator HATCH. Thank you, Dr. Penner.

[The prepared statement of Dr. Penner follows:]

PREPARED STATEMENT OF RUDOLPH G. PENNER

Mr. Chairman, I am pleased to testify today before this Committee on the balanced budget amendment. Concern over the budget imbalance is clearly warranted and one that I share. I also support the objectives of reducing deficits and balancing government expenditures and receipts. It is not clear, however, that the problem is one of procedure rather than of substance. I think that it is the latter. However, I can certainly understand why proponents of such an amendment think it is appealing.

ARGUMENTS FOR A BUDGET-LIMITING AMENDMENT

In the nineteenth century, and for the first part of the twentieth, it was generally understood that government budgets should be balanced except under extraordinary circumstances such as those posed by wars. The rule was so widely believed that it disciplined government, and deficits were the exception rather than the rule.

The Keynesian Revolution of the 1930s deprived us of the balanced budget rule. It provided an intellectual justification for using variations in budget deficits to influence aggregate demand and employment in the economy. If the new theory had been precise enough to prescribe a deficit of a certain size in each year, it, too, could have been a disciplinary force, because at least we would have known that that deficit should not be exceeded. Unfortunately, the theory was not precise, and the appropriate size for the deficit was something that economists and legislators could argue about at length. In effect, we were left without a disciplinary rule that had general approval.

There have been many attempts to invent alternative rules. For example, it has been argued that the budget should be balanced on average over the business cycle, or that it should be balanced if calculated as though the economy were operating at full employment. But no proposed substitute has ever gained the force of the old-fashioned, balance-the-budget rule. As a result, every decade since World War II has seen higher deficits on average.

The desire to amend the Constitution to require a balanced budget rule can be understood as an attempt to reinstate the disciplinary rule that seemed to serve us well prior to the Great Depression. The question is, "Could it be made to work, or would it do more harm than good?"

PROBLEMS OF IMPLEMENTATION

Can the Constitution be used to force a solution on the Congress? While there is general agreement that current deficits are much too high and should be reduced, there is little agreement about what the nation's ultimate goals should be, how fast to approach them, or how best to reach them. Prohibition brought into sharp focus the problems involved in using the Constitution to force a mode of behavior on an unwilling public. The balanced budget amendment might create the same sort of problems, because it can easily be evaded: there are numerous technical problems involved in implementing it, and it invites political stalemate.

Evasion Strategies

Virtually any fixed constraint on public or private activity leads to the development of strategies to avoid controls. Forty-nine states have constitutions designed to balance their budget according to some definition or another. In some states, the process works well. In others, where there has been a conflict between political incentives and the state constitutions, the latter has been evaded by creating independent agencies and through other devices.

In New York State in the 1970s, there was a proliferation of independent agencies, operating spending was redefined to be capital spending, and something called a moral obligation bond was invented to avoid restraints on borrowing. More generally, state balanced budget amendments did not prevent the rate of growth of state and local spending from far exceeding the federal growth rate between World War II and the mid-1970s.

At the federal level, even without the pressures of a constitutional restraint, there are constant attempts to move government economic intervention outside of the budget process. A constitutional amendment would intensify these pressures; and once an activity is moved outside of the budget, there is a danger that it will grow completely out of government control.

Recent attempts to reduce the current budget deficit, but to continue the government-supported activity, have been made by the Administration, Congressional committees, and by outside interest groups. The Administration, for example, proposed that Export-Import Bank direct loans be converted to government-guaranteed loans with subsidized interest. The actual subsidies conveyed to the subsidized borrowers would remain the same; the costs to the borrowers would increase because the interest cost of guaranteed private loans is higher than the government's borrowing costs; the capital demands on the investment markets would change only to the extent that the sum total of guaranteed and direct loans is reduced; but, as measured by the total budget, government outlays and the deficit would be reduced by $7.1 billion over the next five years. Similarly, the Administration's budget proposes to convert the Farmers Home Administration's direct agricultural loans into guaranteed loans. Both policy decisions maintain the government-supported activity but reduce its impact on the total budget deficit.

Various Congressional committees and interest groups have proposed comparable changes to current programs either to avoid budget controls or to allow increased activity for favored programs. Last years' rural electrification bill, S. 1300, would have forgiven $7.9 billion in debt to the Treasury "to insure the continued financial integrity of the . . . REA." This change would have reduced the REA outlays but left the debt unpaid. New proposals to support industrial development and investment in infrastructure would be financed through government guarantees to private investors rather than through government expenditures. The impact on capital markets of the sale of Treasury notes and government-guaranteed securities is essentially the same, but the budget impact is far different. To avoid the Administration's proposed cuts to the Small Business Administration, some of its supporters are proposing the creation of an off-budget, government-sponsored enterprise to finance small business investment companies.

Regulation can often be a substitute for government's power to tax and spend. For example, President Nixon once suggested implementing a national health insurance system by requiring that employers provide a specified private insurance plan for their employees. The plan had relatively minor budget consequences but would have been a major drain on the nation's resources. Whatever one thinks of the government's ability to control budget totals, regulatory policies can often be even more difficult to control because their costs are much less apparent.

Technical Implementation Problems

The resolution before the Committee requires that total outlays do not exceed total receipts and restricts the growth of receipts to the growth in national income. The resolution further directs the Congress to enforce the amendment by appropriate legislation.

While the simplicity of this language should minimize problems of interpretation, ambiguities remain. Under current policy, definitions of the concepts of receipts, outlays, and national income are revised periodically to reflect changed budgetary factors. Changes in concepts, such as how to treat tax expenditures, would presumably continue to occur.

One implementation issue that may cause difficulty grows out of the existence of several major federal programs with dedicated tax revenues designed to equal program spending over a period of years, rather than in each year. The trust funds for Social Security, Medicare, Unemployment Insurance, Airports and Airways, Highways, and so on all build reserves in some years and draw those reserves down in other years. Under the proposed constitutional amendment, when trust fund reserves are drawn down, spending would have to be cut by a like amount elsewhere in the budget--if it is to be in balance--or a supermajority would have to vote an exception for trust fund spending. Once a well-justified exception is made, however, there might be great temptation to make others for which the case is not as strong.

Another serious problem can be anticipated in measuring the control totals. Budget plans and the impact of enacted legislation are currently based on estimated budget effects. Even preliminary data on outlays and receipts are not now available until almost a month after each month's activity. Under the balanced budget amendment, the Congress would either have to base its enforcement actions on estimates or make adjustments after the end of the fiscal year.

The size of the changes required within a short time frame could also present difficulty. Using the budgetary rules of thumb cited in CBO's annual report (The Economic and Budget Outlook: Fiscal Years 1986-1990, February 1985, p. 75), a one percent increase in interest costs would result in a $9 billion increase in the deficit. A one percent change in unemployment would require an even larger enforcement action by the Congress. If the imprecision in the estimates were not discovered until six months into a year, a $9 billion increase in the deficit would require an immediate reduction in spending at an annual rate of $18 billion.

Possibility of Impasse

The Constitution empowers the Congress to do many things but requires it to do only a few. In no case does the Constitution currently prescribe what decision is to be reached. The balanced budget amendment would require the Congress to adopt a balanced budget. The alternative would be for a supermajority--three-fifths of the Members--to approve an unbalanced budget. There is no provision in the amendment for how to settle the matter if there is neither a majority for a balance nor a supermajority for an imbalance.

The current budget debate in the Senate suggests that such an impasse could easily occur. The budget process now in place is much less demanding than that implied by a constitutional amendment, and yet it is far behind the schedule promulgated in the Budget Act. It is proving difficult to get a majority behind any single budget package. Imagine the problems of obtaining a supermajority for the deficits envisioned by various plans for the next few years. There is little doubt that each legislator sincerely believes that his or her favorite plan is superior to all others, and the key question is whether the Constitution could be used to force legislators to vote for plans they they deem to be inferior. Individuals are often willing to compromise, and that is what makes the system work. But can they be forced to compromise; and, if not, what next?

NEED FOR A PHASED IMPLEMENTATION

The implementation of a balanced budget amendment or even the reduction in the current deficit must be accomplished over a number of years. A sudden reduction in government spending or increase in taxes would disrupt the economy. If spending were reduced substantially and abruptly, incomes of taxpayers, entitlements to beneficiaries, and goods and services sold by firms to the government would fall, setting off a chain of declining purchases, reductions in output, and job cutting. Major tax increases could have similar disruptive effects.

CONCLUSION

Exploding deficits have created much frustration, and it is not surprising that we are diligently searching for procedural solutions to help us cope with a highly undesirable situation. There is little doubt that constitutional provisions work well if the public is strongly behind them. In the absence of such support, an artificial constraint can cause chaos, as Prohibition clearly showed.

With regard to a balance budget, the evidence is ambiguous. In some states, balanced budget provisions have worked fairly well, while in the case of New York they worked very badly. They have not, however, greatly curbed the growth of state and local spending over the long run. Public opinion polls suggest an electorate that gives strong generalized support to the concept of a balanced federal budget, but one that is also greatly averse to higher taxes and to most program cuts. Clearly, this makes the implementation of a balanced budget amendment a risky enterprise, because of the temptation and the many opportunities to evade it.

No constitutional provision can be guaranteed to work perfectly. If the public does not strongly support the actions needed to reach a balanced budget, the possibility of an impasse exists, and the evasion techniques that are likely to emerge are particularly inefficient and could significantly damage the economy.

Senator HATCH. Dr. Anderson, we will turn to you as our final witness.

STATEMENT OF MARTIN ANDERSON

Dr. ANDERSON. Thank you, Mr. Chairman.

What I would like to do is to submit my testimony for the record and just focus on a couple of key points.

Senator HATCH. Without objection.

Dr. ANDERSON. We have just heard a lot about the problems of a balanced-budget amendment, and I guess I would like to start off by saying there are some extraordinary positive things that could come from it.

The certain prospect of moving on to a balanced budget as of a certain date would have enormous psychological effects on the economy. Something that economists have a very difficult time incorporating in mathematical models they build to try to forecast the economy is uncertainty about the future, or confidence about the future. Those large projected deficits hang like a black cloud over investment decisions that individuals and businesses must make.

A lot of what passes for Keynesian economics today is not very good economics. But on some things, John Maynard Keynes happened to be right on target. He emphasized in the general theory, quote, "Economic prosperity is excessively dependent on a political and social atmosphere which is congenial to the average businessman." And that was written 50 years ago, and it is still right today.

If the people of this country were absolutely convinced that the budget was going to be balanced within a reasonable period of time, just knowing that it really was going to happen would have a powerful positive effect that would be translated quickly into lower interest rates, more jobs, less inflation, and higher real economic growth.

One important point. During the last couple of years, I have discussed this issue with many people, and often the discussion gets to the point where they say,

> OK, I agree. If we had a balanced budget, our economy would be much stronger, and the only way we can probably achieve that is by constitutional amendment.

But the problem is that if you really do it, and if you really reduce the deficit by $200 billion-plus, it will have a devastating effect on our national security; it will gut social security and Medicare, and you would still need to impose a Draconian tax increase. It just is not worth it. It is better to suffer the pains of a deficit.

Now, I think they have a valid concern. But it is a concern that is based on a premise that need not be. Many people assume that the constitutional amendment would force the Federal Government to eliminate the entire deficit in 1 budget year, or in the case of Senate Joint Resolution 13, I think we would have 2 fiscal years.

In fact, there is nothing to prevent a balanced-budget amendment from including a specific phase-in period. Five years might be a reasonable time. Three or four years ago, phasing out the deficit over a 1- or 2-year period was reasonable, given the size of the deficit. But I think we have gotten to the point today where, with a

$230 billion deficit, it is not possible to phase out the entire defict over a 1- or 2-year period of time.

Let's say we took 5 years to do it. Once the amendment was ratified by the necessary three-fourths of the States, we could take the existing deficit at the time of the ratification, divide it by 5, and then proceed to take a 25-percent bite out of it each year for the next 5 years.

If that kind of a balanced-budget amendment were in place today, the amount of deficit reduction that we would be looking at next year would be approximately $46 billion, about 4½ percent of total spending. Now, I think a deficit reduction of that magnitude could be managed without damaging our national security, ravaging our social welfare programs, or sharply raising tax rates.

But if we did something like that, what we would achieve is something that is precious and vital to the functioning of a free economy—the people's confidence in a sound fiscal policy in the future.

One final point. Some Democrats I have discussed this with have thrown up their hands and said, "Well, fine, that's good for President Reagan. We pass this, and by the time the amendment gets ratified, he will be out of office, and the full burden for making the hard choices that will be necessary will fall on the Democrats."

I am not sure I am willing to concede 1988 yet, but even so, I think that fear is largely unfounded. Most of our knowledge of the ratification process is based on our recent experience with the proposed Equal Rights Amendment, which dragged on, as we all know, for many years. This is not the usual experience. The last amendment added to our Constitution, voting for 18 year-olds, took just 3 months to ratify. It was submitted on March 23, 1971, and became part of the Constitution on July 1, 1971. The amendment before that, succession to the Vice Presidency and the Presidency, took 19 months. The one before that, on the poll tax, took 17 months. And the one before that, on elections for Washington, DC, took 10 months.

A properly drafted amendment could go out to the States and be part of the Constitution in a matter of months.

Senator HATCH. I might just mention to you that I do not think any amendment has taken more than 3½ years for ratification prior to the Equal Rights Amendment—which I think does cause people to wonder whether something is suspect about that particular amendment.

So you are right, it generally takes on an average of about 20 months to ratify a constitutional amendment based upon the past ratification processes, and that would include the Equal Rights Amendment, but except for that, it is considerably less.

Dr. ANDERSON. And given the enormous public support shown in the public opinion polls, I think that a properly drafted amendment could easily be ratified by the time the snow falls in New Hampshire.

Let me just finish by saying I think that if you add a balanced-budget-amendment to the Constitution, you will have a profound impact on the economic policy of the United States. There are some uncertainties and some unknowns that we would have to deal with as the amendment was implemented, but that is true of any great, worthwhile policy venture.

On the other hand, the only real alternative to a balanced-budget amendment seem to be paths that would surely lead us to economic disaster. The balanced-budget amendment may not be perfect, but in my judgment, it is just better than the rest of the alternatives.

[The prepared statement of Dr. Anderson follows:]

PREPARED STATEMENT OF MARTIN ANDERSON

I think everyone here will probably agree that a sound economy, with a solid rate of real economic growth, is vital to the United States -- and to much of the rest of the world. Yet we all know that the powerful prosperity that we have been enjoying for several years is endangered by the unconscionably large deficits that stretch in front of us as far as the imaginations of economic forecasters will allow. We know that if we moved swiftly and surely to reduce that deficit to nothing over the period of a few years it would have a very positive beneficial impact on the personal lives of all Americans. And we also know that if we don't, the consequences will be harsh, especially for those among us who are the least financially nimble. We know all this, but we seem to do virtually nothing about it.

What I would like to suggest today is that the reason why we seem to be immobilized and frozen in the path on the onrushing deficit disaster is that our governmental institutions are not able to cope with the increased power and scope of economic interest groups in our society. The deficit can only be reduced by cutting projected increases in federal spending for defense or social welfare programs or by raising taxes. And many of the same people who strongly support moving toward a balanced budget as soon as possible are often the first ones to vehemently oppose actions necessary to achieve this when their particular interests are at stake.

The usual motive attributed to this kind of behavior is hypocrisy, but I am not sure I agree with that assessment. In fact, I think it is possible to be sincerely and honestly in favor of an overall balanced budget and yet -- given the current rules of the economic game -- to oppose cuts in particular areas without being inconsistent with one's principles. The problem is that while we all might agree that it would be in everyone's best interest to slow defense spending and social welfare spending increases a bit, and even raise taxes some -- if the result of these actions was a substantial increase in the real rate of economic growth, a further lowering of interest rates, inflation and unemployment -- we have no way of insuring that all areas will in fact be acted upon in a fair, equitable manner.

Those who are rightfully concerned about the growing military power of the Soviet Union are fearful that the lion's share of any spending cuts will come out of defense and that by leaving social welfare programs and tax rates virtually untouched, the amount of real deficit reduction will not materially affect the course of the economy.

Those who are rightfully concerned about the ability of our social welfare programs to fulfill their goals adequately and comprehensively are fearful that the lion's share of any spending cuts will come out of social welfare programs and that by leaving defense spending and taxes virtually untouched, there will be little positive effect on the economy.

And then there are many who firmly believe that any move to reduce the deficit will avoid any serious look at either defense spending or social welfare spending, and will eventually rely on raising taxes -- raising them not enough to reduce the deficit much, but high enough to throttle back the economy and actually make the deficit worse.

They all believe that the lion's share of the cost of reducing the deficit will be borne primarily by them. Now, of course this is logically impossible, but in the absence of some overriding general rule that would ensure a balanced budget the uncertainty of what will happen is a powerful and rational justification for letting the deficit continue. Large, continuing deficits, they will agree, are bound to cause serious damage, but attempting to reduce the deficit without going all the way to a balanced budget, could, in their judgment, be worse.

I wish there were an easier way, but I'm afraid the only way to overcome this is to amend the Constitution of the United States to require a balanced budget. All of the special economic interest groups concerned will continue to worry about what portion of the deficit reduction will fall on them, but that concern would be greatly lessened by two things that would occur if a balanced budget amendment were to be added to our Constitution.

First, the magnitude of the deficit reduction would necessitate a political balancing that would be seen as fair and equitable by the public. There is simply no way that a disproportionate share of a full deficit reduction plan would fall on defense spending or social welfare spending or a tax increase. Political pressures would demand that each one of these areas bear a substantial share of the deficit reduction.

Second, the certain prospects of moving to a balanced budget as of a certain date would have enormous psychological effects on the economy. Something that economists have a very difficult time incorporating in the mathematical models they build to try to forecast the economy is uncertainty about the future, or confidence about the future. Those large projected deficits hang like a black cloud over investment decisions that individuals and businesses must make. A lot of what passes for Keynesian economics today is not very good economics, but on some things John Maynard Keynes was right on target. He emphasized in The General Theory that, "economic prosperity is excessively dependent on a political and social atmosphere which is congenial to the average businessman." That was written fifty years ago and it is still right. If people were absolutely convinced that the budget was going to be balanced within a reasonable period of time, just knowing that it really was going to happen would have a powerful, positive effect that would be translated quickly into lower interest rates, more jobs, less inflation, and higher real economic growth.

I'd like to mention one other point. During the last couple of years I have discussed this issue with many people and often the discussion will get to the point where they say, "O.K. I agree. If we had a balanced budget our economy would be much stronger. And the only way we probably can achieve that is by a constitutional amendment. But the problem is that if you really did do it and reduced the deficit by two hundred plus billion dollars it would have a devastating impact on our national security, it would gut social security and medicare, and you would still need to impose a draconian tax increase. It just isn't worth it. Better to suffer the pains of the deficit."

They would have a valid concern, but it is a concern based on something that need not be. Many assume that the constitutional amendment would force the federal government to eliminate the entire deficit in one budget year. In fact, there is nothing to prevent a balanced budget amendment from including a specific phase-in period. Five years would probably be a reasonable time. Once the amendment was ratified by the necessary three-fourths of the states, we could take the existing deficit at the time of ratification, divide it by five, and proceed to take a 20 percent bite out of it each year for the next five years.

If that kind of balanced budget amendment were in place today, the amount of deficit reduction we would be looking at next year would be approximately $46 billion. That is about 4.5 percent of total spending. A deficit reduction of that magnitude could be managed without damaging our national security, ravaging our social programs, or sharply raising our tax rates. But we would achieve something that is precious to the functioning of a free ecoomy -- the people's confidence in a sound fiscal policy in the future.

One final point. Some Democrats I have discussed this with have at this point thrown up their hands and said, "Well, fine for President Reagan. We pass this and by the time the amendment gets ratified he will be out of office, and the full burden for making the hard choices that will be necessary will fall on the Democrats." I'm not sure I'm willing to concede 1988 yet, but even so, I think that fear is largely unfounded. Most of our knowledge of the ratification process is based on our recent experience with the proposed Equal Rights Amendment, which dragged on for many years. This is not the usual experience.

The last amendment added to our Constitution -- Voting for 18 years olds -- took just 3 months to ratify. It was submitted on March 23, 1971 and became part of the Constitution on July 1, 1971. The amendment before that -- Succession of the Vice President to Presidency -- took 19 months. The one before that -- on the poll tax -- took 17 months. And the one before that on electors for Washington, D.C. took 10 months.

A properly drafted amendment could go out to the states and be part of the Constitution in a matter of months. And then President Reagan could have for the last two years of his second term what he has been asking for so long.

Adding a balanced budget amendment to the Constitution would have a profound impact on economic policy in the United States. There are some uncertainties and unknowns that we would have to deal with as the amendment was implemented, but that is true of any great, worthwhile policy venture. On the other hand, the only real alternatives to a balanced budget amendment seem to be paths that would surely lead us to economic disaster. The balanced budget amendment may not be perfect, but, in my judgment, it is far better than the alternatives.

Senator HATCH. Thank you, Dr. Anderson.

Let me start with you, Dr. Penner.

You know, we tend to think of our fiscal problems in macro terms, in the terms of deficits and spending levels. But these deficit and spending statistics hide what is perhaps the main underlying issue, and that is the disincentives created by massive Federal taxation, borrowing, and spending on the micro level.

So, what types of studies has CBO undertaken to review this problem, or what analyses are you aware of in this particular area?

Dr. PENNER. In the last couple of days, we have just released a study of the corporate tax system, which I think goes right to your point, because it shows how that tax has created massive inefficiencies, by distorting the choice of the investment around the economy. Earlier we did a companion version on the personal income tax, and we also looked at the distorted choices that it results in.

I guess the element that you are talking about gets into virtually all our work, whether you are talking about environmental regulation or various welfare incentive schemes or what-have-you. There are just a whole host of studies that approach the issues you just mentioned.

Senator HATCH. We used to hear quite a bit about demand stimulation through additional Federal spending, especially deficit spending. Now, aside from the impact of monetary policy, has there been any significant stimulus from deficit spending, in your opinion?

Dr. PENNER. In this most recent episode, I think the deficit has certainly affected the economy, but I would argue that it has done so as much in its structural composition as in its aggregate demand aspect.

As we analyze the current situation, obviously the spending component on defense has stimulated those industries; there is no doubt about it. But in the aggregate, what we see is a fairly close link between the budget deficit, on the one hand, and the trade deficit, on the other. That is to say, when you run the budget in deficit, it starts to stimulate the economy; it does raise interest rates because of the massive amounts of debt you are throwing out in the system. That, in turn, has attracted capital from international capital markets, raising the value of the dollar. The net result is a stimulus on the one hand, as it were, with the budget deficit, and contraction, on the other hand, with the trade deficit.

Indeed, in economic theory, when you have a flexible exchange rate system in a perfect capital market, the two should precisely offset each other. We do not see them working quite that precisely. They can get out of step from time to time. But I think it is remarkable how well that theory has worked during this particular episode of deficit creation.

Senator HATCH. Could you elaborate briefly upon your statement today that the Keynesian revolution of the 1930's deprived us of the balanced-budget rule. Would it be unfair, for instance, to suggest that the idea of the balanced budget during normal economic circumstances was considered part of our "unwritten Constitution" until this period of time?

Dr. PENNER. I am sorry. Did you say would it be fair to consider it part of the unwritten Constitution?

Senator HATCH. Yes.

Dr. PENNER. I think that is right, sir.

Senator HATCH. You think that it was part of the unwritten Constitution——

Dr. PENNER. Yes.

Senator HATCH [continuing]. Even though now we are trying to write it in expressly.

Dr. PENNER. That is correct. It was, I think, very widely believed that that was the right way to proceed and, unfortunately, over the last 50 years, that notion has eroded, and the horse is now out of the barn, as it were.

Senator HATCH. I notice in your written statement you have made an analogy comparing the balanced budget amendment, and Prohibition. Isn't it the fundamental purpose of our Constitution to limit the authority of Government; wouldn't it be limiting the Congress as opposed to limiting the action of individuals, as in the case of Prohibition. Let me just ask one other question. How is it any different to restrain Congress in their fiscal actions than to limit them in their actions impinging on habeas corpus, for instance?

Dr. PENNER. I am a little puzzled by that, sir, because I do not understand this amendment as a constraining action. It very definitely tells you that you must reach a certain conclusion. It does not tell you how. Moreover, it could, as Mr. Ash suggested, result in very large tax increases, for example, which would be the greater intrusion on the private sector.

Senator HATCH. Well, let me give you some illustrations. The amendment provides that no longer can Congress continue automatically to increase the national debt by a majority vote or by a voice vote, which is commonly done today. That is one way we have continued to increase spending; the other way is through bracket creep caused by inflation, to continue to tax people without the Congress ever having to stand up and vote for taxes. In other words, from here on in, if this amendment becomes law, if Congress wants a tax increase, it can no longer rely on inflation. We benefit, as Members of Congress, from inflation, because people are pushed into higher marginal tax brackets, and in the process, Congress avoids having to stand up and vote for those increased taxes.

If this amendment is passed, that will no longer be the case. Congress will have to, if it wants to increase taxes, face the public by standing up and voting for those taxes if that is what they want to do.

Dr. PENNER. I suppose because it is such an unusual thing in the Constitution, as I see it, that it actually requires you to reach a particular solution. I suppose you can call that a constraint, since that solution——

Senator HATCH. The Congress could ignore this amendment, but they would need a supermajority of votes to do so.

The restraint is a political one, because Members of Congress do not want to vote for tax increases. Take this year as a perfect illustration. No one in Congress wants to vote for tax increases, although there are plenty of Members of Congress who would love nothing better than to stick the public with more tax increases through bracket creep caused by inflation.

For the first time, Congress is going to have to stand up, and face the public. They are going to have to vote, rather than just allowing circumstances to do it for them, as has been the case over the last 50 years.

Dr. PENNER. Of course, we have achieved that end in terms of bracket creep through legislation—against allowing bracket creep because of inflation. We still have not done it through real growth. We could easily index the brackets to real growth, if we like.

I think, however, in terms of whether you define what is going on here as restraint or not, I would return to my more basic question: That is, if you like to define it as restraint, how do you enforce it and, in particular, what is the answer to stalemate? That is to say, if you have 45 Senators who very much want a budget plan that leads to a balanced budget, and you have 55 Senators who very much want a budget plan that leads to a deficit, and that nobody has enough votes to pass what they want——

Senator HATCH. Well, Dr. Penner, we live in a real world which is dictated by the public who votes for these people here. The public is not going to put up with stalemates. We have a stalemate right now. We have not had a real, effective budget resolution since the Budget Act came into effect back in fiscal year 1976.

Dr. PENNER. That is exactly my point.

Senator HATCH. Well, that is my point, too. Amongst praise of this wonderful budget process, the budget has been averaging $51 billion above the First Concurrent Budget Resolution each of the last 5 years. This budget process is not restraining growth in spending.

The difference is that under this amendment, people are going to have to vote. If we reach a stalemate, the public is not going to put up with that under this amendment. They are going to have to act—they will need to vote, which right now, they do not have to do. Right now, we are going through a charade on the floor; many Members of Congress comment on how much they want to balance the budget, yet they are not willing to vote to make the cuts that have to be made. On the other hand, many of these Members are not willing to vote to increase taxes. This amendment is going to force them to make those hard choices, and it is going to end the bias in favor of spending that we presently have in our Congress—and you know, the fact——

Dr. PENNER. It is the last point that I would question—whether it does, in fact, make them make the choice. I am perfectly willing to believe that in the States represented by 55 Senators, the public firmly supports their position, and they are just reflecting it, and that in the States represented by the other 45, the public supports their position very strongly.

Senator HATCH. But you seem to say we cannot do anything about it if we have a stalemate. Well, that is no different than having a treaty, for example, that needs 67 votes, has 60 people support it, but only gets 55 votes. So you have a stalemate with regard to the treaty.

Dr. PENNER. No; I think there is a very important difference: that is, that you do not need a treaty; it fails.

Senator HATCH. Well, maybe you do. Maybe it is the fault of U.N., maybe it is a treaty ending a war. Maybe it is a treaty that resolves genocide. Maybe it is 101 things that the vast majority of people demand. As the head of the Congressional Budget Office, you have watched this process for the last 11 years since the Budget Impoundment Act was enacted; have seen almost total chaotic breakdown of our budget process, in spite of that act; have seen attempts to resolve this problem through statutory inaction, such as the Byrd-Grassley amendment which required a balanced budget by fiscal year 1981; have seen absolutely no restraint of growth of spending; have seen two major tax bills dedicated to the reduction of deficits fail; in the last 4 years, have seen almost a half billion dollars in bracket creep and additional taxation of the people, without anybody voting for it over the last 5 years.

Even having witnessed all of that you seem to be saying well, this system is better than what a balanced budget amendment will give us. I do not see how you can sit there and argue your case in light of the last 11 years, and what you know about the budget process. And here, we are facing $250, $300 billion deficits, while the Members of Congress are saying they hate deficits and that they want a balanced budget. In the last case, 31 of them were willing to vote against the only balanced budget amendment that ever came to the floor of either House of Congress; however, 69 voted for this amendment in the Senate, and 60 percent of the House voted for it.

You attribute to the balanced budget regime the flaws and defects of the present regime, and I do not think you can do that.

Dr. PENNER. I do not see anything in this particular amendment that cures those problems.

Senator HATCH. Well, then, you are saying let's just continue the way we are, in this wonderful system that we have, where Congress is not willing to act. We are paralyzed right now because people will not stand up and vote. Some of us are going to vote for this $52 billion deficit reduction package over here.

Some of us, if we were certain that every cent of a tax increase would go to reduce the deficit and the national debt, would even consider voting for tax increases. But we know it will not—and it will not because there is no restraint, there is no language anywhere in the Constitution that actually forces that to occur. This amendment will be an attempt to do that.

I think one thing that maybe you are not taking into consideration is that the State analogies are not that bad, although I think they can be distinguished from a Federal constitutional amendment. The State constitutional amendments are in States which have legislatures that have just as much a propensity to spend as the national legislature, and also believe they can get elected by spending rather than cutting. Notwithstanding, they honor their constitutions in those States. I believe that—even though they are apples and oranges, the Constitution is generally honored by both Democrats and Republicans. If we added this to the Constitution, I do not think we would have near as many complaints about the deficits that we have in the Congress today. I believe we would really start doing something about it. I think we would have to—because the American people would rise up, and would realize for the first time who are the people who are doing it to them. It comes down to very few votes if you look at this amendment.

Dr. **Penner**. Well, my problems are entirely practical, and I do not see that——

Senator **Hatch**. How can you say that? How can you say that they are entirely practical, when you see a budget system amuck which you are the head of? You do not have any answers as to how to solve this problem, other than, "Members of Congress, you have got to quit spending."

I agree with that wonderful shibboleth, but it has not worked for 50 years; how is it going to work, suddenly, because you come in here and tell people to make it work?

Dr. **Penner**. The basic point is that this could make it even worse.

Senator **Hatch**. How could it make it worse, if you write it into the Constitution——

Dr. **Penner**. It could make it worse simply because of what has happened at the State level, where attempts to evade the Constitution have put various activities of the government completely outside of any budget control whatsoever, and because of the extraordinary incentives in this provision to use regulation, as opposed to taxing and spending, to further the goals of government. Thus, I would argue that as hard as it is to control the budget totals—and we certainly know that it is very hard to control the budget totals—it is even harder to control regulatory efforts of the government, because the costs of those efforts do not show up anywhere.

Senator **Hatch**. You are presuming the worst. You are presuming that if we pass this amendment, the Members of Congress and members of the bureaucracy are going to do everything they can to get around it, in essence ignore the Constitution and the rights of the people. I do not see how anybody who watches how the Constitution is implemented and how it operates can make that argument—and especially——

Dr. **Penner**. My problem is not that they will ignore it. They will sincerely try to adapt to it one way or another, and I do not think the various State people who vote for independent agencies and for all of the other ways of getting around these things do that out of a lack of respect. But I return to my original question. If there are 45 people who would like a plan to balance the budget, and 55 people who would like a plan that results in a deficit, which group is violating the Constitution? I do not see that either of them clearly is. They are both sincere. They both think their plans are the best plans. But unlike a treaty, you really do need a budget. You really do need to spend somewhere.

Now, there are ways you might get out of that stalemate. You might give the President complete control over the budget, for example, if the Congress——

Senator **Hatch**. Of course, nobody wants to do that.

Dr. **Penner**. No. Well, that is the problem.

Senator **Hatch**. Well, that is.

Dr. **Penner**. So I think there are ways out of the problem, but I just do not see any in this particular resolution.

Senator **Hatch**. Dr. Anderson, what do you think about those comments?

Dr. **Anderson**. Well, just a couple of thoughts. One of the things that always struck me in the discussions on the balanced budget amendment is that those people who have serious problems with the balanced budget amendment—and they are valid concerns—have yet to come up with a viable alternative that would put us on the road toward a balanced budget.

Senator HATCH. Well, I think that is why I have been rather heated though not intentionally, with Dr. Penner. I've heard many vague explanations why we cannot make this work, and yet I have yet to hear any real suggestions, other than Congress should stand up and vote and do what is right.

Senator Metzenbaum makes the point—"Follow me onto the floor—and I will cut the whole military out, and I will get that balanced budget for you." Well, I do not think many people in this country want the whole military cut out. That is what it would take to balance the budget next year. He might not take the whole military, but he would weaken the Nation.

These people who think that cutting the military will solve every problem have not looked at what has gone on for all these years.

Go ahead.

Dr. ANDERSON. Let me just add one other point. I think that you alluded to it earlier. The fact that something is in the Constitution changes the situation dramatically. The people of the United States have enormous veneration for the Constitution, and I frankly find it incomprehensible to believe that Senators and Congressmen would deliberately evade the Constitution. The main reason people do not want to put this in the Constitution is not that it will not work, but that it will work.

Senator HATCH. That is right.

As you know, there is no external constraint upon spending predispositions of legislators on Capitol Hill. That is what this amendment does. It imposes some measure of outside limitation upon the members, and that measure is a political measure—which is the greatest force we have to use in this process.

Dr. ANDERSON. Could I just make one other point, and again, this is based on a lot of discussion on this issue with some of my friends out at Stanford. What it really gets down to is there is one group of people who are very fearful that if you had a balanced budget amendment, the net result would be a sharp increase in taxes. They see the lion's share of any deficit reduction coming out of tax increases, and they are very fearful of this.

And there is another group that feels that, well, if you had a balanced budget amendment, they sure would not raise taxes, and they sure would not touch Social Security—they would take it all out of national defense. And they really believe that it would be better to continue with the risks of running an unbalanced budget in order to maintain full military spending.

And the same argument could be made for those people who are very strongly concerned about spending on social welfare programs. The problem is that all three groups are correct if they look at it only from their own viewpoint. But together, they logically cannot all be right. There is no way you can take a lion's share of deficit reduction out of all groups simultaneously.

The great advantage of the balanced budget amendment is that it is a device by which the people of the United States rise above the power of special economic interest groups, and they say as a common group to the country: "Look, these are the overall rules of the game. Within these constraints, you must operate."

Now, if you have those constraints, I think it is certain that what will happen is that you will get a balanced approach. There will be some reductions in the rate of growth of social welfare program spending; there will probably be some reductions in the rate of growth of defense spending, and there will be some increases in taxes. But it will be a combination that will be perceived as being fair and equitable. But you can only get that balanced combination if you have the overall constraints.

Senator HATCH. Madison could not have said it better. He was concerned about the common good and being free of factions. You are saying that this amendment would help require us to at least work together, and one way or the other, resolve these problems.

What about the impasse argument that Dr. Penner has raised?

Dr. ANDERSON. I really do not think it is a major. I think that that is the kind of a problem that would be solved by the political process, that if it really got to a serious impasse, the public simply would not stand for it.

We had a situation in California a couple of years ago, where the comptroller came out and said, "Look, we are going to be about $1 billion in deficit," and that within a certain number of weeks, we were going to run out of money. There was a strong debate, and the Governor wanted to cut spending by about $1 billion, and the legislature wanted to increase taxes, and there was an impasse, a stalemate, and there was a very bitter political dispute, and it was very painful for both Republicans and Democrats. The net result was that they resolved it. It was very painful to do, and I have said I would be willing to bet anybody $50 that if the State of California did not have a requirement to balance the budget, we would have simply borrowed the billion dollars, because ~~it~~ would have been a lot easier than doing what was actually done.

Senator HATCH. I have further questions for all three of you, but I am going to submit them to you in writing, because I have got to be at a conference.

I suppose that the major issue in front of the Republican Conference will be the budget. I have been going to these conferences now for almost 9 years. I have heard all the arguments. I have seen the hand-waving, the screaming, the shouting, and all of the partisanship. I have seen all of the attempts to gain political advantage by both sides, and I have seen virtually nothing done in 10 years, as far as balancing the budget. In fact, it keeps getting worse and worse.

Dr. Penner, I really do respect you and I have inestimable respect for you as an economist. I would like you to come up with an alternative, or at least some way of resolving these problems, because I do not see the present system working to do so. I would be much more respectful of your position if we had an alternative to it that would work.

I have to admit my own Governor, or former Governor, voted this down in the Governors Conference last time; I think his vote was the decisive vote. He sincerely believed, as you do, that this amendment really is not the answer. But in the intervening few years since that time he has said publicly, "I have come to the conclusion that I may have to support the balanced budget amendment, because I do not know anything else that even has the remotest chance of working."

I believe, Dr. Anderson, that it will take about 4 or 5 years for this to be implemented without writing it in. First of all, if we pass this through the Congress by fall, there will be at least a 2-year ratification period. I doubt if it would be much shorter than that, because there will be a whale of a fight out in the States.

Dr. ANDERSON. Could I just comment on that? You are probably right, but there is another possibility. Let us say that the attempts by Congress to control spending are not successful, the attempts to reform the tax system are not successful, and we have a scenario sometime in July or August where this economy becomes troubled. The rate of inflation increases, and interest rates increase. I can forsee a situation in which the people are going to be very concerned, and the balanced budget amendment is going to be the only game left in town. And if that were put out quickly by the Congress, I see no real reason why, especially if the President of the United States got behind it and pushed it very strongly, why you might not generate enough support to have it ratified in a matter of a very few months.

Senator HATCH. Some people feel that it could be ratified so fast our heads would be spinning. And there is that potential, but it will be at least 2 years down the line before it becomes effective.

I have also heard the argument that what we need to do is stand up and do what Congress needs. Well, I agree with that. Unfortunately, there is a basic budget package passed right up front that would cut $52 billion this year and $390 billion over the next 3 years, and since the date that has passed, all we have had are attempts to add matters into the budget by both parties.

Dr. ANDERSON. There is one possible way you could shorten that by at least 1 full year—instead of specifying that it would take place in the second fiscal year, set up a time schedule—2, 3, 4, or 5 years—and once you have set up that schedule to reduce the deficit, have it take effect the very first year, even if it is only a small portion.

Senator HATCH. That is an effective suggestion. We will take it into consideration.

I feel badly that I do not have enough time to chat with you, Roy, because I know you have a lot of things to say about this.

Go ahead, you wanted to comment.

Mr. ASH. May I just make a very brief statement with maybe five or six sentences. Governor Thornburgh this morning said he cannot envision that politicians could flout the Constitution by these various means of subterfuge, and others have said the same. May I quote from a publication, just a few sentences. The CATO Institute, clearly not a liberal organization, one that would see things as you and I would, in many cases——

Senator HATCH. That is a libertarian organization.

Mr. ASH. The title is, "The Underground Government", and I would merely quote the sentences that say as follows: "There are thousands of off-budget enterprises throughout the Nation engaging in a bewildering variety of activities. In Pennsylvania alone, there are 2,456 municipal authorities that had almost $5 billion in debt outstanding." It goes further to say, "Total off-budget spending by State level off-budget enterprises nationwide is estimated to be $106 billion for 1980. This would put total State government expenditures at $249 billion, fully 74 percent higher than the $143 billion on-budget"——

Senator HATCH. Well, your point is well taken, Roy. There are these who do try to get around whatever you do. But that still does not negate the fact that we have got to do something; the present system is not working, and I do not hear any suggestions.

Mr. ASH. But I think what has been said is that we cannot envision that politicians would flout the Constitution.

Senator HATCH. I cannot, either.

Mr. ASH. But this is evidenced in every State, especially in Pennsylvania. The propensity to get around the budget is immediately triggered by passing the kind of legislation we're talking about. It says:

> In Pennsylvania, much to the taxpayers' dismay, the 1950 response of local government to tax and spending limitations has proven to be the rule rather than the exception, for the tax revolt has yielded a similar result nationwide. And the primary reason that off-budget finance is relatively new at the Federal level is that effective constitutional constraints on borrowing have never been imposed upon the Congress.

Basically, this is a well-documented book of subterfuge after subterfuge that have been resorted to in real life, by real life politicians, especially in the State of Pennsylvania, even as the Governor was saying, "I cannot envision that politicians would flout the Constitution."

Senator HATCH. I will make two comments. No. 1, with the present wide-open system, no restraints, no balanced budget amendment, these subterfuges presently exist, and they will continue to exist, and there is much greater propensity for them to exist under the present system.

No. 2, let me just quote the great economics professor, James Buchanan, who made a statement about this point:

> To fix the fence in one spot does not ensure that the cattle will not get out of the pasture at some other place. But it does mean that the cattle are less likely to get out than before the fence in the one spot was fixed.

Now, I have got to get to this meeting, but let me just say this. I am going to submit questions to each of you. But in all honesty, I hear a lot of complaints about the balanced budget amendment, but no alternative, other than this plaintive cry that the Congress should stand up and do what is right. I have heard that from Senator Metzenbaum for 9 years, and I very seldom see him vote to restrain the growth of the budget. He is not alone. Some accuse me of voting too strongly for the military. By the way, the CATO Institute is devastating to the military, if you follow what they have to say about it.

All I am trying to say is I do not think there is any perfect way of doing this. This amendment, had 69 votes in the Senate—2 more than was necessary under the two-thirds vote requisite of the Constitution and was a bipartisan amendment. The first time it was ever brought to the floor, it passed the Senate, and then went to the House and received a 60-percent bipartisan vote of Republicans and Democrats. I do believe that this amendment at least offers some hope because it forces people to stand up and vote if they want to increase taxes or the national debt. That is something that we do not have to do today. We can just sit back and let those things naturally go through bracket creep, or just through voice votes or otherwise, with regard to the national debt. It also puts some burden on Congress. So everybody in this society is going to know who the budget-busters are; which is something they cannot know now.

With that, we will submit further questions. We would like you to answer them as soon as you can. This will be placed on the subcommittee markup for next week and placed on the full Judiciary Committee calendar, assuming the subcommittee passes it out, and I assume that it will, the day afterwards.

We appreciate having you all here. We are very grateful for your tesitmony. Anything you would care to submit additionally in writing, I would be happy to put into the record. We recognize each of you as authorities in this area and as people who are very concerned.

If I seem to be just a little tough about this, it is because I have had to go through this for 9 years, and I see no real alternatives, and I see no real alternative suggestions. Yet, I get the same shibboleths every time we turn around on this, and I think it is time that we stand up and say maybe we had better try something new.

With that, we will recess until further notice.

[Whereupon, at 1:08 p.m., the subcommittee was adjourned.]

APPENDIX

Testimony of Rep. Larry E. Craig (R-Ida.),
Chairman, Congressional Leaders United
for the Balanced Budget (CLUBB),
submitted to the Subcommittee on the
Constitution of the Senate Committee on
the Judiciary, Tuesday, May 7, 1985.

MR. CHAIRMAN: By way of introduction, I am Congressman Larry Craig of the 1st District of Idaho. I am also chairman of Congressional Leaders United for the Balanced Budget, we call it CLUBB, a bi-partisan coalition of more than 100 Congressmen and Senators supporting the balanced budget amendment. I am also co-sponsor along with Rep. Charles Stenholm of Texas of a balanced budget amendent that has more than 190 co-sponsors in the House of Representatives.

Mr. Chairman, nine out of ten Americans surveyed in the latest Gallup Poll believe the federal deficit poses a serious threat to the country.

The run-away federal deficit is the problem. The balanced budget amendment is the solution.

Runaway federal deficits are keeping interest rates high, holding economic growth and jobs creation down, sending millions of American jobs overseas and eroding the foundations of the American dream.

The only way to get the run-away federal deficit under control is to adopt the balanced budget amendment. Congress has tried everything else. Taxes have been raised five times in the last five years. And the deficits get larger.

Congress has tried passing laws to require a balanced budget. Nobody in Washington pays any attention to them. And the deficits get bigger.

Now Congress is trying to freeze the budget for one year to cut the deficit. The freeze is fine. As far as it goes. But a one-year freeze isn't enough.

The balanced budget amendment is Congress's last chance. Nothing else works.

The chief cause of the run-away federal deficit is run-away federal spending. The Grace Commission outlined hundreds of billions of dollars of spending cuts that could be made. But the Congress has no incentive to make the cuts.

The only way to get control of federal spending is to clamp a lid on it with the balanced budget amendment. Congress has tried everything else. Accross the board cuts. Per centage cuts. Spending caps. And today federal spending is nudging the one trillion dollar mark. One out of every four dollars in America.

The balanced budget amendment is Congress's last chance to get control of federal spending and curb the run-away federal deficit. Otherwise, the American people are going to do the job for us. Only two more states are needed to force a constitutional convention to adopt the balanced budget amendment. The responsible thing for Congress to do to avoid the uncertainties of the constitutional convention is to adopt the balanced budget amendment and send it to the states for ratification. Just as it says in the Constitution. Just as we have 26 times before in our history.

Congress can put an end to deficit tyranny with one vote. One vote to adopt the balanced budget amendment. One vote to start to turn things around. To start to get the deficit under control. To start to put growth and opportunity back into the American economy.

Mr. Chairman, CLUBB, Congressional Leaders United for the Balanced Budget, was formed for one reason: To help get the balanced budget amendment through Congress. Today, 105 of our colleagues, of both parties, in both the House and the Senate, have joined CLUBB to do everything we can to get Congress to adopt the balanced budget amendment this year...1985. We don't think America can wait much longer.

Mr. Chairman, I trust the Committee will give the Senate the chance to vote on the balanced budget amendment. And start turning things around.

Thank you.

STATEMENT OF THE AMERICAN FARM BUREAU FEDERATION TO THE SUBCOMMITTEE ON THE CONSTITUTION SENATE JUDICIARY COMMITTEE REGARDING S.J. RES. 13 A PROPOSED AMENDMENT TO THE UNITED STATES CONSTITUTION TO BALANCE THE FEDERAL BUDGET

May 7, 1985

Farm Bureau is the nation's largest agricultural organization representing farmers and ranchers in forty-eight states and Puerto Rico. Our policy is the result of a comprehensive policy development program that involves the active participation of our producer members at the county, state and national levels.

Over three million member families belong to the Farm Bureau. Their livelihood rests primarily in agriculture, but their interests extend to other areas such as tax and budget issues that affect the economic well-being of farmers and ranchers. For this reason Farm Bureau has strong policy support for a constitutional amendment, such as S.J. Res. 13, to balance the federal budget. The following policy was adopted by voting delegates of member State Farm Bureaus at the 66th AFBF annual meeting in January:

Monetary and Fiscal Policies

> "We support a constitutional amendment to require the federal government to operate on a balanced budget each year. Only in extreme emergencies could this requirement be waived with the concurrence of the legislative and executive branches of government. A balanced budget should not be achieved by levying new taxes or increasing tax rates.
>
> "We support a constitutional amendment to restrict the spending authority of the federal government to a realistic percentage of the gross national product (GNP)."

As you can see, our members are specific about the type of constitutional amendment(s) that they support to require the Congress and the President to balance the budget and eliminate deficits. Another message is loud and clear: The budget must be balanced by spending cuts, not tax increases.

Farm Bureau members worked diligently in the 96th, 97th, and 98th Congresses to enact a balanced budget amendment. We were pleased to see S.J. Res. 58 pass the Senate in 1982, but our pleasure was short-lived. We watched with disappointment as the balanced budget amendment failed to pass the U.S. House of Representatives after a successful discharge petition drive. We experienced similar disappointments in the last two Congresses, but we continue to put forth our strong support for the balanced budget amendment.

Farm Bureau support has been evidenced not only in the United States Congress, but in state legislatures. Currently, 32 states have adopted constitutional convention calls to draft a balanced budget amendment. Thirty-four states must approve convention calls before Congress is required to call a convention. Work in the state legislatures has been successful, while opponents' efforts to repeal the convention calls in several states, Iowa, Maryland, and Florida, were unsuccessful.

We need a balanced budget amendment. Our members believe that if states have balanced budget requirements and if farmers and ranchers must act responsibly with regard to their own finances, then it is possible for the federal government to act in the same responsible way. Arguments have been made to the contrary by those who believe that it is impossible for the federal government to operate on a balanced budget and, indeed, that it is not desirable to do so. With the prospect of $200 billion deficits in the foreseeable future, we would like to think that opponents of the balanced budget amendment will come to realize that such an amendment is necessary. So far, the

Congress has not taken the responsibility for achieving a balanced budget either through statute or a constitutional amendment. Clearly, an amendment to the Constitution is needed to provide a permanent remedy. A statutory remedy to the country's budget problems is unacceptable because it could be too easily repealed.

The dismal statistics are well known: The federal budget has been balanced only once in the past twenty years. The deficit surpassed $100 billion for the first time in 1982, whereas only twenty years before, the federal budget itself was only in the neighborhood of $100 billion. By 1987, the federal government is projected to reach its first trillion dollar budget. To say that these numbers are alarming is an understatement, but an even bigger problem rests in the size of federal government spending in relationship to Gross National Product. Using 1962 as a reference point, federal spending then was 19.5 percent of GNP. By 1982, the percentage had grown to 23.8 and reached a high of 24.7 percent in 1983. Taxes continue to take a bigger share of the nation's resources, too. In 1962, federal receipts were 18.2 percent of GNP. By 1982, the share had risen to 20.2 percent. These numbers indicate that both federal spending and the federal tax burden continue to increase. The long-term effect is to choke economic recovery and risk re-inflation and continuing high interest rates.

While we believe that S.J. Res. 13 is a good amendment, it could be strengthened by the addition of a specific, rather than implied, spending limitation. The addition of a provision to limit federal spending to a realistic percentage of the gross national product is desirable. Without it, the size of the federal government could continue to increase in relation to the private sector. Without a ceiling on the percentage ratio of federal spending to GNP, spending restraint may not be sufficient to balance the budget.

Farm Bureau re-emphasizes this point: We do not support tax increases to balance the budget and reduce deficits. Spending must be reduced by reform of federal entitlement programs, including agriculture. A constitutional balanced budget amendment would go a long way toward solving the economic problems of the nation, particularly in agriculture.

As Farm Bureau indicated in similar hearings before the Senate Judiciary Committee in 1981 and 1984, we believe that the balanced budget amendment is a step in the right direction and illustrates real progress toward fiscal responsibility.

Thank you.

Appendix A

1985 Monetary and Fiscal Policies
American Farm Bureau Federation

"Farm Bureau strongly supports the continued reduction in the size of the federal government to stop inflation and increase productivity. This is our top priority. Balancing the federal budget will not be possible unless there are further substantial cuts in federal spending.

"Government economic policies should be designed to encourage economic stability, increased productivity, a greater competitive ability in the international market, and a high level of economic prosperity which will bring out lower interest rates and a more realistic value of the dollar.

"We recommend that all government agencies be required to return unspent money to the Treasury without a budget cut or penalty for the new fiscal year.

"Farm Bureau supports a freeze in total federal spending at the previous year's appropriations level with the exception of interest payments on the national debt. All departments of the government should be examined for cuts in spending. This freeze and spending limitation shall take priority over all other federal spending policies adopted by Farm Bureau.

"Farm Bureau supports a freeze-and-fix program to reform all federal entitlement programs. The plan would require a three-year freeze, or moratorium (no increase), in all federal cost-of-living adjustments. If Congress does not fundamentally fix the entitlement programs within the three-year period, the freeze would continue until Congress accomplishes necessary reforms.

"Efforts to contain government costs should cover a wide range of actions many of which are spelled out in recent reports such as the 'Grace Commission.'

"We support legislative or constitutional changes to give the President line-item veto power in appropriations bills.

"We support a constitutional amendment to require the federal government to operate on a balanced budget each year. Only in extreme emergencies could this requirement be waived with the concurrence of the legislative and executive branches of government. A balanced budget should not be achieved by levying new taxes or increasing tax rates.

"We support a constitutional amendment to restrict the spending authority of the federal government to a realistic percentage of the gross national product (GNP).

"Off-budget federal outlays, including federal credit programs, should be brought on-budget as direct federal outlays. The Federal Financing Bank should be abolished.

"The goal of monetary policy should be general price level stability. The Federal Reserve System should conduct a sustained, long-term monetary policy which will minimize inflation and deflation of prices. Should the Federal Reserve System fail to maintain sound discretionary monetary policies, we will support legislation to instruct the Federal Reserve System to achieve a specified rate of growth in the stock of money consistent with real economic growth, productivity and general price level stability. The Congress should conduct an audit and special public hearings on the Federal Reserve System.

"Recognizing that a significant portion of federal spending is incurred through government contracts, competitive bidding should be encouraged. The use of 'cost-plus' contracts should be minimized."

(ATLANTIC MAGAZINE, FEBRUARY 1983)

WASHINGTON

LESS RED INK

An argument that the balanced-budget amendment would be a rare merging of public and private interests

⁂

OUR ELECTED REPRESENTATIVES in Congress have been voting larger expenditures year after year—larger not only in dollars but as a fraction of the national income. Tax revenue has been rising as well, but nothing like so rapidly. As a result, deficits have grown and grown.

At the same time, the public has demonstrated increasing resistance to higher spending, higher taxes, and higher deficits. Every survey of public opinion shows a large majority that believes that government is spending too much money, and that the government budget should be balanced.

How is it that a government of the majority produces results that the majority opposes?

The paradox reflects a defect in our political structure. We are ruled by a majority—but it is a majority composed of a coalition of minorities representing special interests. A particular minority may lose more from programs benefiting other minorities than it gains from programs benefiting itself. It might be willing to give up its own programs as part of a package deal eliminating all programs—but, currently, there is no way it can express that preference.

Similarly, it is not in the interest of a legislator to vote against a particular appropriation bill if that vote would create strong enemies while a vote in its favor would alienate few supporters. That is why simply electing the right people is not a solution. Each of us will be favorably inclined toward a legislator who has voted for a bill that confers a large benefit on us, as we perceive it. Yet who among us will oppose a legislator because he has voted for a measure that, while requiring a large expenditure, will increase the taxes on each of us by a few cents or a few dollars? When we are among the few who benefit, it pays us to keep track of the vote. When we are among the many who bear the cost, it does not pay us even to read about it.

The result is a major defect in the legislative procedure whereby a budget is enacted: each measure is considered separately, and the final budget is the sum of the separate items, limited by no effective, overriding total. That defect will not be remedied by Congress itself—as the failure of one attempt after another at reforming the budget process has demonstrated. It simply is not in the self-interest of legislators to remedy it—at least not as they have perceived their self-interest.

Dissatisfaction with ever-increasing spending and taxes first took the form of pressure on legislators to discipline themselves. When it became clear that they could not or would not do so, the dissatisfaction took the form of a drive for constitutional amendments at both the state and the federal levels. The drive captured national attention when Proposition 13, reducing property taxes, was passed in California; it has held public attention since, scoring successes in state after state. The constitutional route remains the only one by which the general interest of the public can be expressed, by which package deals, as it were, can be realized.

Two national organizations have led this drive: the National Tax Limitation Committee (NTLC), founded in 1975 as a single-issue, nonpartisan organization to serve as a clearinghouse for information on attempts to limit taxes at a local, state, or federal level, and to assist such attempts; and the National Taxpayers Union (NTU), which led the drive to persuade state legislatures to pass resolutions calling for a constitutional convention to enact an amendment requiring the federal government to balance its budget. Thirty-one states have already passed resolutions calling for a convention. If three more pass similar resolutions, the Constitution requires Congress to call such a convention—a major reason Congress has been active in producing its own amendment.

The amendment that was passed by the Senate last August 4, by a vote of 69 to 31 (two more than the two thirds required for approval of a constitutional amendment), had its origin in 1973 in a California proposition that failed at the time but passed in 1979 in improved form (not Proposition 13). A drafting committee organized by the NTLC produced a draft amendment applicable to the federal government in late 1978. The NTU contributed its own version. The Senate Judiciary Committee approved a final version on May 19, 1981, after lengthy hearings and with the cooperation of all the major contributors to the earlier work. In my opinion, the committee's final version was better than any earlier draft. That version was adopted by the Senate except for the addition of section 6, proposed by Senator William Armstrong, of Colorado, a Republican. Approval by the Senate, like the sponsorship of the amendment, was bipartisan: forty-seven Republicans, twenty-one Democrats, and one Independent voted for the amendment.

The House Democratic leadership tried to prevent a vote on the amendment in the House before last November's elections. However, a discharge petition forced a vote on it on October 1, the last full day of the regular session. The amendment was approved by a majority (236 to 187), but not by the necessary two thirds. Again, the majority was bipartisan: 167 Republicans, 69 Democrats. In view of its near passage and the widespread public support for it, the amendment is sure to be reintroduced in the current session of Congress. Hence it remains a very live issue.

THE AMENDMENT AS adopted by the Senate would achieve two related objectives: first, it would increase the likelihood that the federal budget would be brought into balance, not by prohibiting an unbalanced budget but by making it more difficult to enact a budget calling for a deficit; second, it would check the growth of government spending—again, not by prohibiting such growth but by making it more difficult.

The amendment is very much in the spirit of the first ten amendments—the Bill of Rights. Their purpose was to limit the government in order to free the people. Similarly, the purpose of the balanced-budget-and-tax-limitation amendment is to limit the government in order to free the people—this time from excessive taxation. Its passage would go a long way to remedy the defect that has developed in our budgetary process. By the same token, it would make it more difficult for supporters of ever-bigger government to attain their goals.

It is no surprise, therefore, that a torrent of criticism has been loosed against the proposed amendment by people who believe that our problems arise not from excessive government but from our failure to give government enough power, enough control over us as individuals. It is no surprise that Tip O'Neill and his fellow advocates of big government tried to prevent a vote in the House on the amendment, and used all the pressure at their command to prevent its receiving a two-thirds majority.

It is no surprise, either, that when the amendment did come to a vote in the

Proposed Constitutional Amendment

Section 1. Prior to each fiscal year, the Congress shall adopt a statement of receipts and outlays for that year in which total outlays are no greater than total receipts. The Congress may amend such statement provided revised outlays are no greater than revised receipts. Whenever three-fifths of the whole number of both Houses shall deem it necessary, Congress in such statement may provide for a specific excess of outlays over receipts by a vote directed solely to that subject. The Congress and the President shall, pursuant to legislation or through exercise of their powers under the first and second articles, ensure that actual outlays do not exceed the outlays set forth in such statement.

Section 2. Total receipts for any fiscal year set forth in the statement adopted pursuant to this article shall not increase by a rate greater than the rate of increase in national income in the year or years ending not less than six months nor more than twelve months before such fiscal year, unless a majority of the whole number of both Houses of Congress shall have passed a bill directed solely to approving specific additional receipts and such bill has become law.

Section 3. The Congress may waive the provisions of this article for any fiscal year in which a declaration of war is in effect.

Section 4. Total receipts shall include all receipts of the United States except for those derived from borrowing and total outlays shall include all outlays of the United States except those for repayment of debt principal.

Section 5. The Congress shall enforce and implement this article by appropriate legislation.

Section 6. On and after the date this article takes effect, the amount of Federal public debt limit as of such date shall become permanent and there shall be no increase in such amount unless three-fifths of the whole number of both Houses of Congress shall have passed a bill approving such increase and such bill has become law.

Section 7. This article shall take effect for the second fiscal year beginning after its ratification.

House, a substantial majority voted for it. After all, in repeated opinion polls, more than three quarters of the public have favored such an amendment. Their representatives do not find it easy to disregard that sentiment in an open vote—which is why Democratic leaders tried to prevent the amendment from coming to a vote. When their hand was forced, they quickly introduced a meaningless substitute that was overwhelmingly defeated (346 to 77) but gave some representatives an opportunity to cast a recorded vote for a token budget-balancing amendment while at the same time voting against the real thing.

I have been much more surprised, and dismayed, by the criticism that has been expressed by persons who share my basic outlook about the importance of limiting government in order to preserve and expand individual freedom—for example, the editors of *The Wall Street Journal* and a former editor and current columnist, Vermont Royster. They do not question the objectives of the amendment, but they doubt its necessity and potential effectiveness.

Those doubts are presumably shared by many other thoughtful citizens of all shades of political opinion who are united by concern about the growth of government spending and deficits. Here, for their consideration, are my answers to the principal objections to the proposed amendment that I have come across, other than those that arise from a desire to have a still-bigger government:

1. *The amendment is unnecessary. Congress and the President have the power to limit spending and balance the budget.*

Taken seriously, this is an argument for scrapping most of the Constitution. Congress and the President have the power to preserve freedom of the press and of speech without the First Amendment. Does that make the First Amendment unnecessary? Not surprisingly, I know of no one who has criticized the balanced-budget amendment as unnecessary—however caustic his comments on congressional hypocrisy—who would draw the conclusion that the First Amendment should be scrapped.

It is essential to look not only at the power of Congress but at the incentives of its members—to act in such a way as to be re-elected. As Phil Gramm, a Democratic congressman from Texas, has said: "Every time you vote on every issue, all the people who want the program are looking over your right shoulder and nobody's looking over your left shoulder. . . . In being fiscally responsible under such circumstances, we're asking more of people than the Lord asks."

Under present arrangements, Congress will not in fact balance the budget. Similarly, a President will not produce a balanced budget by using the kind of vetoes that would be required. The function of the amendment is to remedy the defect in our legislative procedure that distorts the will of the people as it is filtered through their representatives. The amendment process is the only effective way the public can treat the budget as a whole. That is the function of the First Amendment, as well—it treats free speech as a bundle. In its absence, Congress would consider each case "on its merits." It is not hard to envisage the way unpopular groups and views would fare.

2. *The President and Congress are guilty of hypocrisy in voting simultaneously for a large current deficit and for a constitutional amendment to prevent future deficits.*

Of course. I have long believed that congressional hypocrisy and shortsightedness are the only reasons there is a ghost of a chance of getting Congress to pass an amendment limiting itself. Most members of Congress will do anything to postpone the problems they face by a couple of years—only Wall Street has a shorter perspective. If the hypocrisy did not exist, if Congress behaved "responsibly," there would be no need for the amendment. Congress's irresponsibility is the reason we need an amendment and at the same time the reason that there is a chance of getting one.

Hypocrisy may eventually lead to the passing of the amendment. But hypocrisy will not prevent the amendment from having important effects three or four years down the line—and from casting its shadow on events even earlier. Congress will not violate the Constitution lightly. Members of Congress will wriggle and squirm; they will seek, and no doubt find, subterfuges and evasions. But their actions will be significantly affected by the existence of the amendment. The experience of several states that have passed similar tax-limitation amendments provides ample evidence of that.

3. *The amendment is substantive, not procedural, and the Constitution should be limited to procedural matters. The fate of the prohibition amendment is a cautionary tale that should give us pause in enacting substantive amendments.*

If this amendment is substantive, so is the income-tax (sixteenth) amendment and so are many specific provisions of the Constitution. The income-tax amendment does not specify the rate of tax. It leaves that to Congress. Similarly, this amendment does not specify the size of the budget. It simply outlines a procedure for approving it: the same as now exists if total legislated outlays do not exceed an amount determined by prior events (the prior budget and the prior growth in national income); and by a majority of 60 percent if total legislated outlays do exceed that amount. The requirement of a supernormal majority is neither substantive nor undemocratic nor unprecedented. Witness the two-thirds majority necessary to override a presidential veto or to approve a treaty.

The prohibition amendment was incompatible with the basic aim of the Constitution, because it was not directed at limiting government. On the contrary, it limited the people and freed government to control them. The balanced-budget–tax-limitation amendment is thoroughly compatible with the basic role of the Constitution, because it seeks to improve the ability of the public to limit government.

4. *The amendment is unduly rigid, because it requires an annually balanced budget.*

This is a misconception. Section 1 of the amendment prohibits a *planned* budget deficit unless it is explicitly approved by three fifths of the members of the House and Senate. It further requires the Congress and the President to "ensure that actual outlays do not exceed the outlays set forth in [the budget] statement." But it does not require that actual receipts equal or exceed statement receipts. A deficit that emerged because a recession produced a reduction in tax receipts would not be in violation of the amendment, provided that outlays were no greater than statement outlays. This is a sensible arrangement: outlays can be controlled more readily over short periods than receipts.

I have never been willing to support an amendment calling for an annually balanced budget. I do support this one, because it has the necessary flexibility.

5. *The amendment will be ineffective because (a) it requires estimates of receipts and outlays, which can be fudged; (b) its language is fuzzy; (c) the Congress can find loopholes to evade it; (d) it contains no specific provisions for enforcement.*

(a) It will be possible to evade the amendment by overestimating receipts—but only once, for the first year the amendment is effective. Thereafter, section 2 of the amendment limits each year's statement receipts to the prior year's statement receipts plus the prior rate of increase of national income. No further estimates of budget receipts are called for. This is one of the overlooked subtleties in the amendment.

Any further fudging would have to be of the national-income estimates. That is possible but both unlikely and not easy. What matters is not the *level* of national income but the *percentage change* in national income. Alterations of the definition of national income that affect levels are likely to have far less effect on percentage changes. Moreover, making the change in income artificially high in one year will tend to make it artificially low the next. All in all, I do not believe that this is a serious problem.

(b) The language is not fuzzy. The only undefined technical term is "national income." The amendment also refers to "receipts" and "outlays," terms of long-standing usage in government accounting; in section 4, total receipts and total outlays are defined explicitly.

Nor is the amendment a hastily drawn gimmick designed to provide a fig leaf to hide Congress's sins. On the contrary, it is a sophisticated product, developed over a period of years, that reflects the combined wisdom of the many persons who participated in its development.

(c) Loopholes are a more serious problem. One obvious loophole—off-budget outlays—has been closed by phrasing the amendment in terms of total outlays and defining them to include "all outlays of the United States except those for repayment of debt principal." But other, less obvious, loopholes have not been closed. Two are particularly worrisome: government credit guarantees, and mandating private expenditures for public purposes (e.g., antipollution devices on automobiles). These loopholes now exist and are now being resorted to. I wish there were some way to close them. No doubt the amendment would provide an incentive to make greater use of them. Yet I find it hard to believe that they are such attractive alternatives to direct government spending that they would render the amendment useless.

(d) No constitutional provision will be enforced unless it has widespread public support. That has certainly been demonstrated. However, if a provision does have widespread support—as public-opinion polls have clearly shown that this one does—legislators are not likely to flout it, which brings us back to the loopholes.

Equally important, legislators will find it in their own interest to confer an aura of inviolability on the amendment. This point has been impressed on me by the experience of legislators in states that have adopted amendments limiting state spending. Prior to the amendments, they had no effective defense against lobbyists urging spending programs—all of them, of course, for good purposes. Now they do. They can say: "Your program is an excellent one; I would like to support it, but the total amount we can spend is fixed. To get funds for your program, we shall have to cut elsewhere. Where should we cut?" The effect is to force lobbyists to compete against one another rather than form a coalition against the general taxpayer.

That is the purpose of constitutional rules: to establish arrangements under which private interest coincides with the public interest. This amendment passes that test with flying colors.

6. *The key problem is not deficits but the size of government spending.*

My sentiments exactly. Which is why I have never supported an amendment directed solely at a balanced budget. I have written repeatedly that while I would prefer that the budget be balanced, I would rather have government spend $500 billion and run a deficit of $100 billion than have it spend $800 billion with a balanced budget. It matters greatly how the budget is balanced, whether by cutting spending or by raising taxes.

In my eyes, the chief merit of the amendment recommended by the Senate Judiciary Committee is precisely that it does limit spending. Section 1 requires that statement outlays be no greater than statement receipts; section 2 limits the maximum increase in statement receipts; the two together effectively limit statement outlays. Moreover, if in any year Congress manages to keep statement receipts and outlays below the maximum level, the effect is to lower the maximum level for future years, thus fostering a gradual ratcheting down of spending relative to national income.

A further strength of the amendment is the provision for approving an exceptional increase in statement receipts (hence in statement outlays). The spending-limitation amendment that was drafted by the National Tax Limitation Committee required a two-thirds majority of both houses in order to justify an exceptional increase in outlays. The amendment passed by the Senate requires only "a majority of the whole number of both houses of Congress." However, the majority must vote for an explicit tax increase. I submit that it is far easier to get a two-thirds majority of

Congress to approve an exceptional increase in spending than to get a simple majority to approve an explicit increase in taxes. So this is a stronger, not a weaker, amendment.

Section 6, proposed by Senator Armstrong in the course of Senate debate, makes the debt ceiling permanent and requires a supermajority vote to raise it. That provision was approved by a narrow majority composed of a coalition of right-wing Republicans and left-wing Democrats—the one group demonstrating its hardcore conservatism, the other seeking to reduce the chances of adoption of the basic amendment.

I do not favor the debt-limit provision. Its objective—to strengthen pressure on Congress to balance the budget—is fine, and it may be that it would do little harm. But it seems to me both unnecessary and potentially harmful. I trust that it will be eliminated *if* and when the amendment is finally approved by Congress. I shall favor the amendment even if the debt-limit provision is left in, but less enthusiastically.

7. *The amendment introduces a new economic theory into the Constitution.*

It does nothing of the kind—unless the idea that there should be some connection between receipts and outlays is a new economic theory. The amendment does not even change the present budget process. *If* Congress enacts a balanced budget that rises by no greater a percentage than does national income. But it does significantly stiffen the requirement for passing a budget that is in deficit or for raising the fraction of our income spent on our behalf by the government.

The amendment recommended by the Senate Judiciary Committee deserves the wholehearted backing of every believer in a limited government and maximum freedom for the individual.

—*Milton Friedman*

Milton Friedman, emeritus professor of economics at the University of Chicago, is a senior research fellow of the Hoover Institution.